

YARVADKAR'S
WITH
MERAKSHARA
THAIKRODAA,
AND
PARAS
YAWADKAR'S
GAIKRODAA (In 2 vols.)

THE COLLECTION
OF
Hindu Law Texts—Series.

The following are the Books published
and undertaken in this Series.

Edited by Principal J. R. Gharpure, B.A.I.L.B. Honours in Law, Fellow of the University
of Bombay, Advocate, High Court, Bombay.

This Series was started in 1909 with the object of publishing all the
important Texts bearing on Hindu Law, together with their
English Translations.

N. B. The prices quoted below are net, exclusive of postage
and packing.

No.

I. **Yājñavalkya-Smṛti** with the **Mitāksharā** of **S'ri Vijnānesvara**. (Text) pp. 450+63.

This book contains the Smṛti of Yogi Yājñavalkya with Vijnānesvara's Mitāksharā thereon. The book is divided into three Books or Adhyāyās viz. The Āchāra, the Wyavahāra, and the Prāyaschitta. At the beginning has been given a short introduction containing information about the two writers. An exhaustive 'List of Contents' running over 22 pages in double columns gives the heads of contents in minute details. The Index to verses indexing each half of a S'loka given at the end is also exhaustive covering 28 pages in double columns. Then follows the Index to the names of the Sages and Authors referred to in the body of the book, an Index to the *Nyāyas* or Maxims of law quoted in the book, as also an Index to the Rules of Grammar. [Price Rs. 8,

II. The **Mitāksharā**—An English Translation of the text as published in Vol. I of this series. The text of Yājñavalkya is translated and printed in black type to distinguish it from the **Mitāksharā** which is printed in the ordinary type with the quoted words and passages in thick types. The notes are critical, and copious, and refer to the cases decided by the courts. The translation of the Viramitrodaya is printed in a smaller type, and of **S'ulapāṇi** in a different type to differentiate the three. The Translation is being published in six parts with running pagings.

- III. The Subodhini—Text) A commentary by Vis'ves'vara Bhatta on the Mitāksharā of Sri Vijnānes'vara, Vyavahārādhya complete, with list of contests, and Index as in Vol. I. [Rs. 3-8.
- IV. English translation of Subhodhini Rs. 10.
- V. Bālambhātti-Âchārādhya. (Text) a commentary on the Achārādhya of the Mitāksharā by Bālambhātti Pāyagunde of Benares. List of contents and Index as in Vol. I and an exhaustive Preface by Babu Govind Dass. [Price Rs. 10
- VI. Bālambhātti—Vyavahārādhya, Do. Text [Rs. 6.
- VIII. Bālambhātti—Prāyaschittādhya (Text) [Rs. 6.
- IX. The Manusmṛti with the gloss of Medhātithi (Text), The list of contents is exhaustive and specifies each verse and its contents, as well as the contents, of the commentary thereon. The Index to verses is to each quarter of a verse. This is followed by an Index to the several Authors, R̄shis referred to, to Miscellaneous quotations, to the Sutras and Vārtikas of Grammar, to the several Nyāyas or Maxims &c. The bound Volume contains Text pp. 1-942+250. Not available.
.....
- XI. The Smṛtichandrikā by Devanānabhatta. (Text). The Āñhika, Vyawahāra, and Srāddha Prakaraṇas complete pp. 1-736+104 with Indexes as in Vol. IX. [Rs. 12.
- X.
- XIII. The Sāpindya Pradīpa by Nagojibhatta, Sāpindya Nirnaya, and extracts from other works bearing on the Law of Sapinda relationship with English Translations and an exhaustive introduction. (In the Press).
- XIV to XXV. The Twelve Mayūkhās by Bhatta Nilakantha collectively known as the Bhagavanta-Bhāskara.
- XIV-A. The Vyawahāra-Mayukha—Text complete and published with the List of contents, Indexes &c, [Rs. 4
- XIV-B. English Translation of the above and notes uniform with the series. [Rs. 8.
- XV. The Sanskāra Mayūkha—Detailing the severral purificatory ceremonies. (Text) Rs. 3

देववाणी-परिषदा प्रकाशिता ग्रन्थाः

(अस्यां सूच्यां क्रमाः क्रमः, द्रष्टव्यः लेखकः/सम्पादकः, प्रकाशनतिथिः 21.8.1992 तः
प्रभावि रथकेषु मूल्यज्ञ दीयन्ते।)

1. देववाणी-विलासः (सं० डॉ० रमाकान्त शुक्लः) (22.1.1978)
2. सुगमरामायणम् (आचार्य रमेशचन्द्र शुक्लः) (18.8.1978) 60.00
3. द्वितीयवार्षिकाधिवेशनस्मारिका (सं० डॉ० रमाकान्त शुक्लः) (12.2.1979)
4. बर्वाचीनसंस्कृतमहाकाव्यविमर्शः (I) (सं० रमा० शुक्लः) (10.7.1979) 40.00
5. श्रीकृष्णचरितम् (आचार्य रमेशचन्द्र शुक्लः) (30.11.1979) 50.00
6. देववाणी-दर्शनम् (सं० डॉ० रमाकान्त शुक्लः) (13.12.1979) 50.00
7. तृतीयवार्षिकाधिवेशनस्मारिका (सं० डॉ० रमाकान्त शुक्लः) (21.3.1980)
8. बर्वाचीनसंस्कृतमहाकाव्यविमर्शः (II) (सं० रमाकान्त शुक्लः) (27.5.80) 50.00
9. कर्णभूषणम् (डॉ० सी० आर० स्वामिनाथन्) (15.7.1980) 15.00
10. इरविजयस्य साहित्यिकमध्ययनम् (डॉ० कृष्णकान्त शुक्लः) (21.8.1980)
100.00
11. भाति भे भारतम् (प्रथमसंस्करणम्) (रका० शुक्लः) (22.11.1980) 40.00
12. श्रीमद्भ्युदीक्षितचरितम् (डॉ० हरिनारायण दीक्षितः) (9.2.1981) 20.00
13. भारतस्वातन्त्र्यसंग्रामेतिवासः (आचार्य डॉ० रमेशचन्द्र शुक्लः) (4.3.81) 35.00
14. बाभाणकमञ्जरी (पं० टी० वी० परमेश्वर अच्यरः) (13.5.1981) 15.00
15. सदाशयसमुच्चयः (पं० टी० वी० परमेश्वर अच्यरः) (27.5.1981) 15.00
16. मेघदूतः एक विश्लेषण (डॉ० देवीदत्त शर्मा) (18.6.1981) 20.00
17. रघुवंशः एक विश्लेषण (डॉ० देवीदत्त शर्मा) (2.7.1981) 20.00
18. बभिज्ञानशाकुन्तलः एक विश्लेषण (डॉ० देवीदत्त शर्मा) (17.7.1981) 20.00
19. कालिदास की कला और संस्कृति (II) (डॉ० देवीदत्त शर्मा) (17.7.1981)
60.00
20. बर्वाचीनसंस्कृतमहाकाव्यविमर्शः (III) (सं० डॉ० रमाकान्त शुक्लः)
(13.12.1981) 50.00
21. जयभारतमूसे (प्रथमसंस्करण) (डॉ० रमाकान्त शुक्लः) (24.12.1981) 30.00

22. साधारणीकरण और समानान्तर चिन्तन की पूर्वपीठिका (डा० सुलेखचन्द्र शर्मा) (21.3.1982) 50.00

23. राधाकृष्णरसायनम् (पं० गोद्धरं उणि नम्बूदिरीपादः) (6.7.1982) 40.00

24. अभिनवाईनुभवाटकम् (गाचार्य रमेशचन्द्र शुक्लः) (15.8.1982) 25.00

25. गर्वाचीनसंस्कृतसाहित्यपरिचयः (I) (सं० रमाकान्तशुक्लः) (21.8.82) 50.00

26. पूर्णकुम्भः (पं० विष्णुकान्त शुक्लः) (29.10.1982) 20.00

27. अहनायक और अभिनवगुप्त की साधारणीकरणविचयक बबधारणा (डा० सुलेख चन्द्र शर्मा) (15.11.1982) 50.00

28. स्फूर्तिसप्तशती (डा० शिवदत्त शर्मा चतुर्वेदी) (29.12.82) 30.00

29. साहित्यकीतुकम् (पं० टी० वी० परमेश्वर अच्यरः) (19.1.1983) 40.00

30. एच्चवार्षिकाविदेशनस्थारिका (सं० डा० रमाकान्त शुक्लः) (21.1.1983)

31. संस्कृत साहित्य में राष्ट्रीय भावना (प्रथम खण्ड) (डा० हरिनारायण दीक्षित) (11.2.1983) 10.00

32. श्री बद्रीशुभ्रातम् (डा० सी० आर० स्वामिनाथन्) (10.3.1983) 10.00

33. रसदर्शनम् (प्रथमसंस्क०) (डा० रमेशचन्द्र शुक्लः) (4.6.1983) 25.00

34. अभिनवोत्तर संस्कृत काव्य शास्त्र में साधारणीकरणविभार्ग (डा० सुलेख चन्द्र शर्मा) (5.6.1983) 50.00

35. संस्कृत साहित्य में राष्ट्रीय भावना (हितीय खण्ड) (डा० हरिनारायण दीक्षित) (1.8.1983) 100.00

36. संस्कृत साहित्य में राष्ट्रीय भावना (तृतीय खण्ड) (डा० हरिनारायण दीक्षित) (15.8.1983) 100.00

37. श्रीपादसप्तति: श्रीपादपरागव्याख्या (डा० सी० आर० स्वामिनाथन्) (31.8.1983) 40.00

38. उच्छिष्टगणपतिमहाकल्पः (सं० डा० सी० आर० स्वामिनाथन्) (4.11.83) 8.00

39. श्री बद्रीशतरक्षिणी (श्री श्रीसुन्दरराजन्) (13.12.1983) 20.00

40. सुराशिमकाष्मीरम् (श्री श्रीसुन्दरराजन्) (24.12.1983) 20.00

41. संस्कृतसमीतक-संस्कृतनाट्यसमोरह विवरणिका (सं० डा० रमाकान्त शुक्लः) (28.12.1983)

देववाणी-परिषदा प्रकाशिता ग्रन्थाः

42. पुरम्बरणकमलम् (डा० रमाकान्त शुक्लः) (13.12.1983) 10.00
43. साधारणीकरणः प्राच्य एवं प्रतीच्य चिन्तन (डा० सुलेखचन्द्र शर्मा) (13.12.1983) 50.00
44. रसदर्शनम् (द्वितीयसंस्करणम्) (डा० रमेशचन्द्र शुक्लः) (1.1.1984) 50.00
45. संस्कृत साहित्य में राष्ट्रिय जावना (सम्पूर्ण) (डा० हरिनारायण दीक्षितः) (26.1.1984) 300.00
46. जाराघना (सं० मण्डन मिश्रः) (13.3.1984) 10.00
47. भाति औरीजसम् (डा० रमाकान्त शुक्लः) (15.4.1984) 10.00
48. साधारणीकरण और समानान्तर चिन्तन (डा० सुलेखचन्द्र शर्मा) (21.8.1984) 200.00
49. कूषा (डा० उमाकान्त शुक्लः) (13.12.1984) 20.00
50. पण्डितराजीयम् (डा० रमाकान्त शुक्लः) (24.12.1984) 20.00
51. कृष्णात्परं किमपि तत्त्वमहं न जाने (आचार्य रमेशचन्द्र शुक्लः) (1.1.1985) 10.00
52. वभिशापम् (डा० रमाकान्त शुक्लः) (2.1.1985) 20.00
53. सारत्वतसमुन्मेषः (डा० विन्द्येश्वरीप्रसाद मिश्रः 'विनयः') (7.1.1985) 20.00
54. रस सिद्धान्त और नाटक (डा० सुन्दरलाल कर्णूरिया) (2.7.1985) 60.00
55. नवभारतपुराणम् (डा० रमेश चन्द्र शुक्लः) (15.8.1985) 50.00
56. अभागभारतम् (श्रीसुन्दरराजः) (30.10.1985) 20.00
57. महाप्रयाणम् (कविरल श्रीकृष्ण सेमवालः) (30.10.1985) 20.00
58. काव्यात्मजिः (सं० रमाकान्त शुक्लः) (29.12.1985) 60.00
59. वध्यात्मरामायण में वध्यात्मचिन्तन (पं० त्रिगुणानन्द शुक्लः) (12.10.1986) 40.00
60. निकषा (डा० केशवचन्द्र दाशः) (17.10.1986) 20.00
61. श्रीगच्छघटसपादशतकम् (डा० रामकिशोर मिश्रः) (13.12.1986) 15.00
62. संस्कृतसेवकः त्वामिनाथः (सं० रमाकान्त शुक्लः) (9.3.187) 60.00
63. नूतनसत्यनारायणकथा (डा० रमेशचन्द्र शुक्लः) (11.7.1987) 10.00
64. लक्ष्मीशतकम् (डा० वरदाचार्य कण्णन्) (21.8.1987) 20.00

65. ज्ञातम् (डा० केशवचन्द्र दाशः) (13.12.1987) 20.00
66. दयानन्दसूक्षितसप्तशती (पं० शिवकुमार मिश्रः) (13.12.1988) 20.00
67. श्री नेहल्लवृत्तम् (डा० रमेशचन्द्र शुक्लः) (26.1.1989) 15.00
68. कालिदास की जन्मभूमि गढ़वाल हिमालय (पं० धर्मानन्द जमलोकी)
(22.6.1989) 40.00
69. भाति मे भारतम् (द्वितीयसंस्क०) (रमाकान्त शुक्लः) (21.8.1989) 15.00
70. गान्धिसूक्षितसप्तशती (पं० शिवकुमार मिश्रः) (21.8.1989) 20.00
71. श्रीसीताचरितम् (आचार्य डा० रमेशचन्द्र शुक्लः) (1989) 20.00
72. श्रीगान्धिचरितम् (प्रो० चारुदेव शास्त्री) (2.10.1989) 50.00
73. श्रीराधाचरितम् (आचार्य डा० रमेशचन्द्र शुक्लः) (1989) 20.00
74. दूतप्रतिवचनम् (डा० इच्छाराम द्विवेदी 'प्रणवः') (24.12.1989) 20.00
75. भाति मे भारतम् (तृतीयसंस्करण) (रमाकान्तशुक्लः) (21.8.1990) 18.00
76. वर्वाचीनसंस्कृतसाहित्यपरिचयः (II) (सं० डा० रमाकान्त शुक्लः) (12.2.1991)
50.00
77. 'वर्वाचीनसंस्कृत' संग्रहः (I) (सं० डा० रमाकान्त शुक्लः) (6.1.1992) 200.00
78. 'वर्वाचीनसंस्कृत' संग्रहः (II) (सं० डा० रमाकान्त शुक्लः) (6.1.1992) 200.00
79. 'वर्वाचीनसंस्कृत' संग्रहः (III) (सं० डा० रमाकान्त शुक्लः) (6.1.1992) 200.00
80. नीतिमञ्चरी ('कविरत्न' ओमप्रकाशठाकुरः) (8.2.1992) 60.00
81. नाट्यसप्तकम् (डा० रमाकान्त शुक्लः) (21.8.1992) 100.00
82. जय भारतभूमे (द्वितीयसंस्क०) (डा० रमाकान्त शुक्लः) (21.8.1992) 100.00
83. श्रीषुन्दरस्त्वापात् तथा शरणागतिषोडशी (श्रीसुन्दरराजः) (24.10.92) 10.00
84. भारतप्रबन्धात्म (डा० रमाकान्त शुक्लः) (यन्त्रस्य)

प्राप्ति-स्थानम्

देववाणी-परिषद्, दिल्ली, आर-6 वाणी विहारः, नयी दिल्ली-110059

DEVAVANI PARISHAD, DELHI,

R-6 VANI VIHAR, NEW DELHI-110059 (INDIA)

PHONE : 5553499

मुद्रापक: प्रवीण प्रिण्टिंग सर्विस, उत्तम नगर, नयी दिल्ली-110059

In Public Domain. Digitized by eGangotri and Sarayu Trust Foundation Delhi.

The Collection of Hindu Law Text

Vol. II. Part III.

YĀJÑAVALKYA SMRTI

WITH THE COMMENTARIES OF

(1) The MITĀKSHARĀ by Vijñanesvara Bhikshu

(2) The VIRAMITRODAYA by Mitramis'ra

AND

(3) The DÎPAKALIKÂ by S'ûlapâṇi

Vyawahâradhyâya.

Chapters I-VII (Pages 631-976)

An English Translation with notes, explanations etc.

BY

J. R. GHARPURE, B.A., LL.B., (Honours-in-Law.)

Principal Law College, Poona, Advocate High Court, Bombay.

Fellow of the University of Bombay.

Second Edition

(All rights reserved).

Digitized by eGangotri and Sarayu Trust Foundation Delhi

THE GURU GRANTH SAHIB

THE BHAGVAT PURANA

TRANSLATED AND ASSISTED BY DR. (1)

Printed by S. V. Parulekar, at the Bombay Vaibhav Press, Servants
of India Society's Home, Sandhurst Road, Girgaum, Bombay

and

Published by V. J. Gharpure, at the office of
The Collection of Hindu Law Texts, Girgaon, Bombay.

(GPO-160 copy no. 11442 Extinguish)

The Bhagvata Purana Translated and Assisted by Dr. (1)

xx

Digitized by eGangotri and Sarayu Trust Foundation Delhi

Digitized by eGangotri and Sarayu Trust Foundation Delhi

Sole Agents for India & Foreign Countries.

Messrs. B. V & Co.,

Book-Agents & Publishers,

3321

Girgaon, Bombay (4).

PREFACE.

As announced last year when the second part of the Achârâdhyâya was published, the first part of the Vyawahârâdhyâya is now being issued. This portion consists of Chapters I-VII which give the General and Special Rules of Procedure, the laws of Debt, Pledges, and Deposits, and the provisions as to Witnesses, Documents, and Ordeals. It will thus be seen that the portion now issued in this Part consists of the Procedure or the Adjective law of the Smṛti. The next Part which will consist of Chapters VIII-XXV contains the Substantive portion of the Smṛti.

As announced before, the translation now issued consists of

- (1) The Original Smṛti of Yājñavalkya.
- (2) The commentary called the Mitâksharâ by Vijñînesvara.
- (3) „ „ „ Viramitrodaya by Mitramis'ra and
- (4) „ „ „ Dipakalikâ by S'ûlapâni.

In the First Edition which was issued in 1914, only the Smṛti of Yājñavalkya and the Mitâksharâ were included in the translation.

The two commentaries of the Viramitrodaya and the Dipakalikâ were subsequently secured from the Library of the India Office. The commentary of the Viramitrodaya has also been published in the Choukhamba Sanskr̥t Series of Benaras and the Dipakalikâ is being published in entirety in this Series. It will be remembered that the translation is being issued in handy volumes of about 400 pages for the convenience of subscribers.

The Second Part of the Smṛtimuktâphalam by Sri Vaidyanâtha-Dikshita is also being sent out along with this volume.

The next instalment will consist of:

(1) *The English Translation* of the remaining portion of the Vyawahârâdhyâya of the Yājñavalkya Smṛti, with the three Commentaries.

(2) *The Sanskrit Text* of the Dipakalikâ by S'ûlapâni.

The assistance of my son Bal has, as usual, been of much use.

Girgaum, Bombay.
15th March 1938 }

J. R. GHARPURE.
Editor.

LIST OF CONTENTS

Chapter I.

GENERAL RULES OF PROCEDURE

Subject	Page	Subject	Page
he King should administer justice ...	631	„ Contents of, Form of Particulars ...	652, 656
Vyawahāra—defined ...	632, 635	Vicious plaints ...	653
„ several aspects ... „ note.		Mixed pleas ...	654
Duty of the king ...	633	No change in the plaint after the answer is filed ...	655
Result of non-investigation ...	„ „	Right to begin ...	659
„ faulty „		Answer—Essentials of „ Kinds of ... „	660, 696
Derivation of Vyawahāra ...	636	Denials, Kinds of ...	661
Councillors and Assessors ...	637	Faults in an answer ... „ explained ...	662
Their qualifications ...	638	Mixed pleas ...	663
„ number ...	639	Order in „ „ illustrated ...	664
The Chief Judge ...	640, 642	Simultaneous proof not allowed ...	665
Who should be appointed ? ...	641	Procedure in an answer ...	666
A perverse decision, effect of „ Punishment for ...	643	A Hina-Wādī ...	667
Commencement of a proceeding (Vyawahāra) ...	645, 649	Exhibition of evidence ...	668
Plaints, kinds of ...	646	Burden of Proof ...	669, 694, 695
Inadmissible plaints ...	650	Kinds of evidence ...	672
Procedure after the complaint ...	647	The Result ...	673
Who may and may not be summoned or arrested ...	648, 658	Four Parts of Vyawahāra ...	674
Agents ...	649, 657	Pratyākalita Pāda ...	675
Plaint reduced to writing ...	651		

Chapter II.

SPECIAL RULES OF PROCEDURE.

Subject	Page	Subject	Page
Counter-claim, when allowed ...	679	False pleas : penalty for „ Fine „ ...	687
No change in pleadings ...	680, 701	When defence to be immediate ...	688
„ result of shifts ...	681	Disqualifying causes for a witness. ...	689, 690
Limitation of this rule ...	681	Unfit persons—characteristics of ... „ Signs of ...	691
Counter-charge when permissible ...	683, 684	Priority as to witnesses ...	692
Security to be taken ...	685		
Object of the Security ...	686		

Subject	Page	Subject	Page
Suit with a wager ...	698	Open deposits ...	727
Unequal or one-sided wager ...	699	The needle and the kettle maxim... (सूचीकटाहन्याय)	728
Careful investigation necessary	700	Permissive possession ...	729
Quantum of proof in a denial ...	702	Appropriation of pledges	730, 732
Effect of a partial denial ...	703	Penalty for ...	731
" of its disproof...	"	Essentials of possession ...	734
In suits for father's debts ...	704	Possession ripening into ownership	735
In criminal complaints ...	705	" and Title ...	736, 737
In case of a general denial ...	706	" as Basis of title	744, 745 739
Conflict—between Smritis ...	707	" for three generations ...	740
" Rules of Law and Politics.	708	When mere possession good title .	742
The Ātatāyins ...	711	and when not ...	743
Rule on a conflict ...	712	Essentials of possession ...	746
Kinds of evidence ...	713	Several Tribunals ...	"
Mode of Proof ...	714	Their respective jurisdictions	747, 752
The maxim of part for the whole (एकदेशविभावितन्याय) ...	715	Appeal and Rehearing	748, 752
Burden of proof ...	716	Transactions which may be set aside	749
Probative value of evidence ...	717	Inadmissibility of suits	753, 754
Order of proof ...	718	between preceptor and pupil	
In cases of pledge, gift and sales,	719	" master and servant	750
Of later transactions, in others ...	720	" father and son	751
Ownership—origin of	721, 723	" husband and wife	
Possession, not a basis of	722	Property lost and recovered	755
Adverse possession ...	723	Time limit	756
Duration of possession ...	724	Treasure-Trove	757
Ten years for movables and Twenty years for the immovable ...	725	Rule as to distribution	758, 759, 760
Suggested conclusion ...	726	Property taken away by robbers...	761
		Duty of the king	762

Chapter III.

RECOVERY OF DEBTS.

Subject	Page	Subject	Page
Debts which may and may not be paid ...	763	Where no interest is leviable ...	775
Interest—rate of ...	764	When creditor may himself recover	776
" kinds of ...	765, 768, 773	When several claims are set up ...	778
Special rates ...	766, 772	Special preferences ...	779
Stipulated interest ...	767	King's dues ...	780
Limits to accumulation, Damdupat &c. ...	769, 771, 774	When the debtor is poor ...	781
Capitalisation of interest ...	770	Tender, effect of ...	782
		Non-acceptance , , ,	783

Subject	Page	Subject	Page
What debts should be paid ...	784	The Jāteshtī maxim ...	813
“ “ need not be paid ...	785	When payable ...	814
“ “ the son need not pay ...	786, 787	Persons prohibited as sureties ...	816
Mother's debts ” ...	788	For females and beasts ...	818
When is a husband liable ...	789	THE LAW OF PLEDGES.	
“ should a wife pay ...	790	Kinds of ...	819
Acknowledged and enjoined debts.	791	Lapse of a pledge ...	820, 826
Liability of sons and grandsons ...	792	Time for redemption ...	821
Extent of ...	793, 794, 798, 802	Pledge with custody ...	822, 824
Assets and liability ...	796	Exception ...	823
Women ...	798	Pledge with a Time limit ...	823
Swairinis and Punarbhūs ...	799, 803	“ for use ...	825
Transactions prohibited between certain relations... ...	805	“ proof of ...	827
Representation ...	806	“ if destroyed ...	828
“ by wife ...	807	Chātrita pledge ...	829

THE LAW OF SURETYSHIP.

Surety—defined ...	808, 817
“ Kinds of ...	809
Liability of sons ...	810
Extent of ...	811
Joint and several ...	812

Chapter IV.**LAW OF DEPOSITS.**

Subject	Page
<i>Upanidhi</i> and <i>Nikṣhepa</i> ...	837, 842
Rule in case of loss ...	838
“ by superior force ...	”
Exception ...	830

Subject	Page
Wrongful appropriation of ...	840
<i>Yāchitaka</i> , <i>Nyāsa</i> , &c.	841, 844
Anvāhita ...	843

Chapter V.**WITNESSES.**

Subject	Page
Characteristics of ...	848
Kinds of ...	”
Appointed and unappointed ...	846
Qualifications of ...	847
Persons unfit to be ...	848, 851, 854, 857
“ Described ...	840, 856
A single witness ...	852, 855, 858
In serious charges ...	853, 859
Kinds of affirmation ...	860, 863
Form of Oath ...	861
Oath by touch ...	864
Refusal to give evidence, penalty for ...	865, 866
Penalty for silence ...	867
When witnesses differ	868, 870

Subject	Page
Place where to be examined ...	869
Probative force of testimony ...	871, 872
When more qualified witnesses appear ...	874
What evidence is conclusive ...	875
Evidence after decision ...	876, 877
Burden in simultaneity of claims ...	878
Punishment for false evidence ...	880
“ “ habitual offenders ...	882
Special punishment ...	881
For a Brāhmaṇa ...	883
For withholding evidence ...	884
When an untruth is permissible ...	887
Expiation for ...	888

Chapter VI.
DOCUMENTS.

Subject	Page	Subject	Page
Kinds of ...	... 891	Rule when original lost &c.	901, 904
" described ...	..."	Secondary evinence ...	... 902
Form of " "	892, 897	Jayapatra ...	... 903
Debtor's endorsement	893	How document to be proved	... 905
Attestation by witnesses	894	Circumstantial inference	... 906
Endorsement by the writer	895	Endorsement of payment	... 907
General rules regarding	896	" of witness	... 909
Invalid Documents ...	898	Document to be torn upon pay- ment	... 908
Extent of liability under	899		
Special rule for a pledge	900		

Chapter VII.
ORDEALS.

Subject	Page	Subject	Page
Kinds of ordeals	... 909	The ordeal by Fire ...	... 944
In serious cases	... 911, 914	The procedure by the performer ...	948, 99
In petty cases	... 912	" " " Chief Judge	947
By agreement	... 913	Invocation Mantra "
The oath, <i>Kos'a</i> &c. ...	915, 916	The preparation of nine circles, their dimension, intervening spaces &c. ...	... 949, 50
Preparation for an ordeal	... 918	Procedure in cases of doubt	... 951
Optional rule by Pitāmaha	... 919	Retrial, when, prescribed	... 953
Different ordeals for different seasons	... 920, 921	Ordeal of Water ...	... 955
The general procedure	... 922	The Procedure described	960, 961
In cases of women, children, old men &c. ...	923, 924	Seasons for it	... 967
Rules for the performer	... 925	Result ...	... 959
Special ordeals	... 926	Procedure if the performer visible	... 959, 961
Pecuniary limits for several ordeals	... 927, 930, 932	Ordeal by Poison ...	962, 966
Ordeals graded to losses	... 928	The Mantra for it ...	
In charges of treason, Sāhasás &c.	929	The effects of the poison	963, 966
The ordeal of Balance des- cribed	... 933, 941, 942	Poisons to be selected	... 963
The invocation Mantra	... 934	" avoided	... 964
Construction of the Balance	... 935	Season for the ordeal	... 964
Inauguration of the deities	936, 937	To whom it should not be given...	965
The mantra by the Chief Judge	938	The result	... 965
The test ...	... 939	Ordeal by <i>Kos'a</i> ...	967, 970, 971
The result	... 940	The Procedure	... 967, 968
The Balance house	... 941	The test and the result	... 969

OTHER ORDEALS.

Subject	Page	Subject	Page
The ordeal by Rice ...	... 971	Pitāmaha's rule	... 973
" The heated māsha.		Another course	... 974
Its preparation	... 972	The oaths	... 974
Another course	... 973	Their varieties	... 775
The ordeal of the Dharma and Adharma	973, 974	The application of these	... 975
		Determination of the result	... 976
		Time limit	... 976

S'RĪ
YĀJÑAVALKYA-SMRTI
TOGETHER WITH THE COMMENTARY CALLED
MÎTAKSHARÂ
OF
S'RĪ VIJÑÂNES'WARA
AND THE COMMENTARIES
OF
VIRAMITRODAYA BY MITRÂMIS'RÂ
AND
DÎPAKALIKÂ BY S'ULAPÂNI

SECOND BOOK

ON VYAWAHÂRA: POSITIVE LAW.

Chapter I.

OF THE RULES OF PROCEDURE IN GENERAL.

Introductory.

Of a king possessing the (necessary) qualifications of anointment &c. the protection of the subjects is the highest duty; that, (*i. e.* the protection) however, is not possible without punishing the guilty. The detection of the guilty, moreover, is not possible without the administration of justice (Lit. holding a trial). That suits should be tried daily has already been said¹ *viz.* that "a king should attend personally to the administration of justice every day, surrounded by (or with the help of) the Councillors." The various details of a trial *viz.* its nature, its kinds, and its procedure have, however, not been described, and the Second Book is being commenced for describing these. 10

Yâjñavalkya, Verse 1.

The king, divested of anger and avarice, should administer justice along with learned Brâhmaṇas, in conformity with the principles of legal science.

1. Āchârâdhyâya Verse 360.

Mitâksharâ:—*Vyawahârân*, &c. judicial trials &c. a complaint against another and having relation to one's self is a *Vyawahâra*! As for example—where a certain

1. The word व्यवहार—has been severally explained from several points of view. viz. (1) Its intrinsic character, (2) Its function, (3) Its functionaries, (4) Its component parts, (5) The means by which a suit is decided, (6) Its kinds, (7) The results, (8) Its defects or flaws &c. and (9) The time and place.

5 It is therefore necessary to note its aspects from all these points of view:—
I Its *intrinsic character*, Kâtyâyana gives a derivative meaning thus :—

वि नानार्थे अव संदेहे हरणं हार उच्यते । नानासंदेहहरणात् व्यवहार इति सृतः ॥ २६ ॥
Yâjñavalkya: स्मृत्याचार येषेन मार्गेण धर्मिनः पैरैः । आवेदयन्ति चेद्राज्ञे व्यवहारपदं हि नत् ॥ (व्य. ५)

10 Vyawahara Mayukha. विप्रतिपाद्यमाननरांतरागताज्ञ नाधर्मज्ञापनात्कूला व्यापारः (पृ. १ पं १२).
II. The *functional aspects* have been stated by Kâtyâyana (25).

प्रयत्नसाधे विच्छिन्ने धर्मार्थे न्यायविस्तरे । साध्यमुलोऽत्र यो वादो व्यवहारः स उच्यते ॥

Nârada.. धर्मश्च व्यवहारश्च चरित्रं राजशासनम् । चतुष्पादात्रहरोऽयमुत्तरः पूर्वबाधकः ॥ (I, 10)

III. Its *functionaries*.

राजा स्वरुपः सभ्यः शास्त्रं गणकलेखकौ । हिरण्यमशिरुदकमष्टांगः समुदाहृतः ॥

15 IV. Its *component parts*: Nârada—(I, 8-9)

स चतुष्पादतुःस्थानश्वतुःसाधन एव च । चतुर्हितश्वतुर्व्यापी चतुष्करीति कीर्त्यने ॥

अष्टाद्वाद्वादशपदः शतशास्त्रस्तपैव च । वियोनिर्व्यभियोगश्च द्विद्वारो द्विगतिस्तथा ॥.

See also Yâjñavalkya Verse 8 further on

V, VII, VIII. The *means, results, and flaws*. Nârada (I, 12-13)

सामायुपायसाध्यत्वाच्चतुःसाधन उच्यते । चतुर्णामाश्रमणां च रक्षणात्स चतुर्हितः ॥

कर्तृत्वयोः साक्षिणश्च सभ्यान् रजानमेव च । व्याप्रोति पादशो यस्माच्चतुर्व्यापी ततः सृतः ॥

पादो गच्छति कर्तारं पादः साक्षिणमृच्छति । पादः सभासदः सर्वान्पदो राजानमृच्छति ॥ (III, 12)

धर्मस्यार्थस्य यशसो लेकपद्मक्षेत्रपैव च । चतुर्णं करणादेषां चतुष्करी प्रकीर्तिः ॥

Bṛhaspati: केवलं शास्त्रमाश्रित्य न कर्तव्यो विर्णयः । युक्तिहीने विचारे तु धर्महानिः प्रजायते ॥

25 Gauḍama (११, १९, २३, २५)—‘वेदे धर्मशास्त्राण्यज्ञान्युपवेदः पुराणम्’ | also, “न्यायाधिगमे

तकोऽभ्युपायः । तेन भूद्य यथास्थानं गमयेत् । विपतिपत्तौ वैवियवृद्धम्यः प्रत्यवत्प्रत्य निष्ठां गमयेत् ”. ।

Bṛhaspati : (६, १७-१८)

द्विप्रकारा क्रिया प्रोक्ता मातुषी दैविकी तथा । साक्षिलेखानुमानं च मातुषी विविधा सृता ।

and Nârada says धटाद्या धर्मजाता च दैविकी नवधा सृता ।

30 धर्मशास्त्रार्थशास्त्राभ्यामविरोधेन मार्गतः । समीक्षमाणो निषुणं व्यवहारगतिं नयेत् ॥

प्रतिज्ञोत्तरं शयेहेतुपरामर्शप्रमाणानिर्णयप्रयोजनात्मको व्यवहारः, मिताक्षरा पृ. ३ पं. २६.

VI. Its *kinds* have been given by Manu as eighteen, Oh. VIII. 4-7 see page 634 further on. Nârada enlarges these to 108. see I. 20.

VII. As to the *result* note this text of Hâriti

स्वधनस्य यथा प्राप्तिः परधर्मस्य वर्जनम् । न्ययेन यत्र क्रियते व्यवहारः स उच्यते ॥

Aparârka—describes it as ‘consisting of the *plaint* of the plaintiff, the *answer* of the defendant, and the *evidence*’ वादिप्रतिवादिनोः क्रियात्मकः ।

Nârada तत्र सभ्ये स्थितो धर्मो व्यवहारस्तु साक्षिषु । चरित्रं पुस्तकरणे राजाज्ञायां तु शासनम् ॥

पादो गच्छति कर्तारं पादः साक्षिणमृच्छति । पादः सभासदः सर्वान्पादो राजानमृच्छति ॥

चौरोऽत्मैरः साध्यसाधु जायते व्यवहारतः । युक्तिं विना विचारेण माण्डव्यश्चौरतां गतः ॥

40 IX. As to the *time*, Kâtyâyana observes.

आद्यादन्दोऽष्टमागायद्वृद्धे भगवत्यं भवेत् । स कालो व्यवहारस्य शास्त्रे दृष्टो मनीषिभिः ॥

Brahaspati describes the *place of justice* thus :—

कुर्मपद्ये गृहं कुर्याज्जलवृक्षाश्रितं पृथक् । प्रादिशि प्राद्मुखीं तस्य लक्षणां कल्पयेत्सभाम् ॥

Vyawahāra
defined.

person says that the land &c. is his, and any other also says in contradiction to him, that it is his.

The Author indicates its *i. e.* of the *Vyawahāra*-variety by the (use of the) plural. By the word *nṛpa*, *i. e.* king, the Author indicates that this is not the duty of the *kṣatriya* order alone, but also of any other endowed with the authority to govern the subjects. *Pasyēt*—should administer, &c. is a repetition (by way of corroboration) of what was said before and is intended as laying down a special duty. *Vidwadbhiḥ*, along with the learned,—with (the help of) those (who are) well-versed in works on legal science and the *Vedas*, grammar &c.

Brāhmaṇaiḥ, with *Brāhmaṇas*,—not *Kṣatriyas* or others. By the expression, 'Brāhmaṇas' introduced by the Instrumental case, their subordination is indicated, from the grammatical aphorism¹ 'conjunctive use with *Saha* (the preposition *with*) indicates subordination.'

Hence, in the case of absence of an investigation, or for a false decision, the fault would be that of the king, and not of the *Brāhmaṇas*. As observes *Manu*:²—‘A king, punishing the innocent (Lit. unpunishable), and not punishing the guilty (Lit. deserving punishment), brings great infamy on himself and goes to hell’. By what procedure (should he try suits)? *dharmaśastrānūṣāreṇa*, in conformity with *Dharma S'āstra*³ (Science of religion and law) and not with the science of politics. The established usage and law of the country &c. have not been separately mentioned, as they form a part of the subject matter of legal science, in so far as they (such usage and law) are not inconsistent with the general principles of legal science. And as the sage *Yājñavalkya* has said⁴ later on, “a custom which is not opposed to law should be carefully maintained, as also the law or usage made or established by the king”. *Krōdha-lōbha-vivarjitāḥ*, &c., divested of anger and avarice &c.. When it is established that it (*i. e.* the administration of justice) should be in

1. Pāṇini. II,-3-19. (सहयुक्तप्रधाने ।)

2. Oh. VIII. 128.

3. For the extent and scope of the expression *Dharma-S'āstra* see the General Note on the Hindu Law Texts.

4. Bk. II. 186.

conformity with the principles of legal science, the mention of the additional condition (that the king should be) "divested of anger and avarice" is indicative of a *special injunction* (आदरार्थम्)¹ Krôdha anger—intolerance. Lôbha avarice—excess of greed. (1).

5

Viramitrodaya.

"The judicial proceedings, he himself should investigate, surrounded by the councillors, every day", what has been thus stated² in the last Book, the Author now elaborates in detail by a separate Book.

Yājñavalkya, Verse, 1.

10 Here, although the investigation of a judicial³ trial has been stated in the last Book, still a judicial trial with all its parts being set out in this Book only, it is called the Book on Vyawahâra. There, moreover, these are the Chapters : viz.

15	I. Chapter on the Rules of Judicial Procedure. Verses 1-36.	XIII. Breach of Contract of service. 182-184
	II. Payment of Debts—Verses 37-64.	XIV. Breach : of Contract. 185-192.
20	III. Deposits. Verses 65-67.	XV. Non-payment of Wages. 193-198.
	IV. Witnesses. Verses 68-83.	XVI. Gambling and Betting. 199-203.
	V. Documents. 84-94.	XVII. Slander and Abuse. 204-211.
25	VI. Ordeals. 95-113.	XVIII. Assault. 212-229.
	VII. Partition of Dâya. Verses. 114-149.	XIX. Sâhasas. 230-253.
	VIII. Boundary Disputes 150--158.	XX. Non-delivery after Sale. 254-258.
30	IX. Disputes between the own- ers and keepers (of cattle) Verses 159-167	XXI. Partnership. 259-265.
	X. Sale without ownership. Verses. 168-174.	XXII. Theft. 266-282.
35	XI. Non-completion of gifts. Verses 175-176.	XXIII. Protection of Women. 283-294
	XII. Rescission of a Sale. 177-181	XXIV. Miscellaneous. 295--307

1. The meaning is that the king is asked by the general law that he should administer justice according to religion and law, but in particular he is asked to cast off all anger and avarice.

2. See verse 360 Achâradâyâya p. 620 above.

3. Viśvarupa makes it further clear: एकत्वेऽपि व्यवहारस्य स्वकीयविशेषपेक्षया चहृचनम् । यथाह मनुः 'तेषामायमृणादानम्'— नारदश्व 'चतुष्पादश्रुत्यापी'—

Vidwadbhi, ‘along with the learned’, i.e., men well conversant with the principles of legal science; *brāhmaṇaiḥ*, ‘with the Brāhmaṇas’; *saha*, ‘along with’; *nṛpah*, ‘the king’; from anger and avarice being particularly averse; *Dharmaśāstrānusārena*, ‘in conformity with i.e., without detriment, to *Dharma* and *Sāstra*, “Dressed in decent attire, the king after going to the court house, with close attention, being seated with face towards the East, should investigate the cases of suitors” in this¹ and the like manner, suits containing the plaint and the answer, *pas'yet*, ‘should administer’, i.e., should investigate.

By the word *nṛpa*² is included one even other than a Kshatriya, 10 who is a protector of subjects. *Brāhmaṇaiḥ* is the principal course. If that is not possible, then along with *Kshatriyas* or *Vaiśyas* also, as has been stated before.³ The particular mention of *Dharmaśāstra* is with a view to point out its chief importance; for in the investigation, the science of polity may also have to be followed. That has been stated 15 by Kātyāyana⁴: “By those experts in the *Dharmaśāstra* and versed in *Arthaśāstra*”. On a conflict between the *Dharmaśāstra* and the *Arthaśāstra*, however, the greater or less potentiality will be stated later on.

As to the etymology of *Vyavahāra*, Kātyāyana⁵ says: “*Vi*, has the sense of many; *ava*, means doubt, *harana* or removal is expressed by *hāra*; 20 by reason of the removal of several doubts, it is known as *Vyavahāra*.”

That, moreover, of this character is of two sorts. As says Nārada⁶: “Attended by a wager, and not attended by a wager; this should be known to be of two kinds. It is ‘attended by a wager’ where a party takes in writing a certain sum which has to be paid besides that in 25 dispute.” ‘He who is defeated in this proceeding, shall pay so much

1. See Kātyāyana Verse, 55.

2. i. e. who occupies the position of a Ruler of the people.

3. See Page 621 lines 14-21.

4. Verse 57. By adopting this quotation from Kātyāyana, it is indicated that the study of the principles of Political science was a necessary part of the accomplishment of one to be appointed to investigate cases.

5. Verse 26.

6. Introduction 4. With this aspect of a suit the student may with advantage compare the *Actio Sacramentum* of the Roman Law. The two resemble in both aspects.

penalty to the successful party or to the king' in this or a similar form where a condition or wager like this is laid before the writing down of the Plaintiff, that is 'a suit with a wager'; one other than this is 'a suit without a wager'.

5 It has been stated: 'in accordance with the *Dharma S'âstra*'; there, the Author mentions the position of the *Dharma S'âstra*, i.e., by reference to the entire treatise. Thus indeed becomes congruous the mention hereafter of the witnesses, disputants, &c., since these are incorporated into the *Dharma S'âstra*. (1).

10

S'ulapāñi

In regard to the Recovery of Debts and several other titles at Law such doubts as arise are removed by this, and therefore, this deliberation which removes doubts as to the several points is called *Vyavahâra* or a Judicial proceeding. So Kâtyâyana:¹—' *Vi*, has the sense of many; 15 *ava*, means doubt; *harâna* or removal is expressed by *hâra*; by reason of the removal of several doubts, it is known as *Vyavahâra*.' *Tân*, these judicial proceedings, the Lord of the land, should himself personally investigate, and in company with the Brâhmaṇas knowing the *Dharma-sâstra*. In accordance with the rules of the *Dharma-sâstra* regarding the 20 Plaintiff, the Answer, the Proof, the Trial and the Decision, and not through anger, or hatred, nor through avarice, nor by partiality. Although it has been said that the king should himself investigate² judicial proceedings, still this is a subsidiary³ condition of the principal point viz. investigation according to the principles of *Dharma Sâstra*. (1)

25

Yâjñavalkya, Verse 2.

A king should select as his Councillors⁴ those persons who have become accomplished by learning and study⁵, who know the law, who speak the truth, and who are the same⁶ to friends and foes alike. (2).

1. Verse 26.

2. Verse 360. निर्णयेत्—The use of this expression has the sense of investigation carried to a decision.

3. धर्मशास्त्राणां गुणं विधानार्थमयमनुवादः—गुण and अनुवाद—The principal of the chief point is गुण, and the subsidiary or subordinate one is अनुवाद.

4. The words *Councillors* and *Assessors* are separately used here to bring out the distinction between नियुक्त (appointed) and अनियुक्त (unappointed). The word सम्पत् stands for those who are appointed. and has been translated as *Councillors*. The word *Assessors* refers to those learned Brâhmaṇas who voluntarily go to a court and are referred to in verse I, above. Cf. the *Judex*, and the *Recuperatores* of the Roman system.

5. i. e. of the Vedâs.

6. *Impartial to friends and foes as well.*

Mitâksharâ.—Further, *S'rutêna*, by learning, by studying the *Mîmânsâ* (the science of Interpretation),
Page 2. Grammar etc ; and also *adhyayanêna*, by study,
i. e. the study of the *Vedâs*; *sampannâh*, accomplished; *dharmajñyâh*, knowing the religion, *i. e.* those who
know religion and the science of law; *satyawâdinâh*, who speak
the truth, *i. e.* who have (established) a character for speaking the truth. 5

Sabhyas (Councillors) described. *Ripau mitre cha ye samâh*, same to friends and foes alike, unaffected by feelings of hatred, love &c. Men of this description should be invested 10 as councillors by the king, after conferring upon them gifts, and other tokens indicative of respect, that they may (become fit to) attend or sit in the meeting or assembly, *sabhâsadah*.

Although the expression ‘accomplished by learning and study’ has been used without particularisation, still Brâhmaṇas only (are meant). 15 As says Kâtyâyana¹ :—“Moreover, he (*i. e.* the king), accompanied by assessors or councillors, who are steady, special scholars, of high parentage, and who are the best of Brâhmaṇas, who are clever in interpreting the meaning of *Dharma S'âstra*, and who are accomplished in politics.” 20

Those to be selected, moreover, should be three, the plural having been used with a (special) purpose ; and also there being a text of Manu² viz:—“In the place where three Brâhmaṇas, versed in the *Vedâs*, sit down.” Brhaspati³, however, intimating that the councillors should be seven, five, or three, observes: “Where, *Viprâs* (Brâhmaṇas) knowing the usage of the people and the *Vedâs*, as well as the law, and being either seven, five, or even three, are sitting, that assembly is equal (in Sanctity) to a sacrificial assembly”. It should not, moreover, be supposed that (the words) “accomplished by learning and study” and others, are adjectival of Brâhmaṇas referred to in the last verse in (the expression) “along with Brâhmaṇas,” it being impossible that words having the Nominative and the Instrumental termination at their end, should be connected as an adjective and the word qualified (by it), as also on account of the possibility of the fault of repetition being committed by the use of the expression “by the learned”. 35

Moreover, Kâtyâyana¹ has brought out clearly the distinction between the Brâhmaṇas and the Councillors thus :—“A king attains heaven, who investigates disputes according to law, with the help of the Chief Judge, the minister, the religious preceptor, the Brâhmaṇas, 5 and the Councillors.” There, the distinction is that the Brâhmaṇas are not appointed, while the Councillors are appointed. Hence also it is said² “whether appointed or not appointed, he who knows the law is entitled to speak”.

Among these, those who are appointed should advise the 10 king on the facts as they stand, and if he would act otherwise, then they should dissuade him, otherwise they would be guilty. Kâtyâyana³ has also said :—“The councillors who follow him, even when he acts with injustice, are co-sharers with him in it (the injustice); therefore the king should be warned (advised) by them.” Of the 15 unappointed, however, the sin occurs only when they speak a falsehood, or do not speak at all; not when they do not dissuade the king. As Manu⁴ has said :—“Either the court must not be entered, or the truth must be spoken; a man who either speaks nothing, or speaks falsely becomes sinful (guilty).” Ripau Mitré Chêti, *to friends and foes, &c.*, in this clause by the (use of the) word *cha* is indicated that the court should also have the attendance of a few merchants for the satisfaction of the people. As says Kâtyâyana⁵: “Attended by a few tradesmen of good family, free from malice, and possessing the qualification of high birth, character, age, good behaviour 20 and affluence, and family tradition.” (2).

Viramitrodaya.

There, moreover first, in regard to the statement “along with learned Brâhmaṇas” while explaining the learning, the Author discusses the Brâhmaṇas

30

Yâjñavalkya, Verse 2.

Srutam, ‘learning’, i.e., with the help of the Mimânsâ and the like, understanding the meaning; accompanied by that, with the study of the *Veda* and *Sâstra*, accomplished, i.e., possessed. Therefore also *dharmajñâh*, ‘who know the law’, i.e., who are clever in discriminating the *dharma* and the non-*dharma*; and therefore also who have a character for truth-speaking. *Ye ripau mitre cha samâh*, ‘who are the same to foes and friends alike’ devoid of hatred, anger, etc., those

1. Verse 56, see note 4 on p. 636

2. By Nârada. III, 11.

3. Verse 75.

4. Oh. VIII. 13.

5. Verse 58.

Brahmanas should by the king be made councillors, i.e., who will attend the courts. The meaning is that honour and respect, etc., should be so ordained for them that they may attend the court for the deliberations. By the use of word *cha*, 'and', are included the indifferent.

By the use of the plural number, the Author intends the particular number stated in other Smṛtis. So, moreover, Manu¹: "In the place where sit down three Brāhmaṇas knowing the Vedas." Brhaspati² also: "seven, five, or three may be the Councillors." Really, however, the inclusion of the unappointed Brāhmaṇas having been stated before, even apart from those, this verse is intended to direct others to be made 10 councillors. Hence it is that the Chief Justice, and the ministers, together with the Brāhmaṇas and the Purohits have been stated by Kātyāyana³. After premising the investiture, it has been stated: "Attended by a few merchants of good family, possessing the qualifications of high birth, character, age, good behaviour and affluence, and free from malice." 15 By Manu⁴ also has been said:—"In transactions between tradesmen and artisans, and also among persons subsisting on agriculture, or on the stage, where a decision is impossible to be reached, it should be got done by the experts in the lines themselves." This is only indicative. The point is that whoever is a specialist in a particular matter, by him 20 indeed that matter should be got decided.

Brhaspati⁵ mentions persons necessary for (a court of) justice : "The king should appoint two persons—an accountant, and a scribe—who know the principles of the science of words and names, have studied the lexicons, who are skilful accountants, who are pure, and who are acquainted with the various alphabets. For summoning and guarding the witnesses, the plaintiff, and the defendant, a truthful and confidential man should be appointed, subject to the authority of the Councillors"." (2)

S'ulapāṇi

The Author mentions the councillors

30

Yājñavalkya, Verse 2.

Accomplished with the knowledge and the meaning of the Vedas, and the study of the Vedas; who know the *Dharma sāstra*; and who by habit

1. Ch. VIII. 11.

2. Ch. I. Verse 11.

3. Verse 58.

4. This verse is not found in Manu; see however Brhaspati I. 26.

See *Raghunathji Tarachand vs. Bank of Bombay I. L.*, R. 34 Bom. 72, at p. 78.

5. Ch. I. Verses 14, 15.

6. सूयाधीनः

are truth-speakers; those who are of an even mind towards an enemy as also to a friend; such should be appointed councillors.

5 Kâtyâyana¹ states a special rule: "He, moreover, accompanied by councillors, who are steady, special scholars, of high parentage, and who are the best of Brâhmaṇas, who are experts in the *Dharma Sâstra*, and are accomplished in the science of polity; along with the chief judge, the minister, the religious preceptor, the Brâhmaṇas, and the councillors, the king who investigates disputes, attains heaven, and retains it according to Dharma." (2)

10 It has been laid down that 'the king should administer justice'; the Author mentions a secondary course

Yâjñavalkya, Verse 3.

15 Unable to attend to the administration of justice on account of other engagements, by a king should be appointed (in his place) to work along with the Councillors, a Brâhmaṇa, knowing all laws.

Mitâksharâ :—On account of his being engrossed in other works, *vyawahârân apas'yatâ*, unable to attend to the administration of justice; *nṛpeṇa*, by a king; *sabhyaiḥ saha*, along with the Councillors, referred to above, *sarvadharmavit*, knowing all laws, all laws i. e. laws laid down in the *S'âstrâs*, as also the customary laws; knows i. e. (considers) discriminates; such a one is he who knows all laws; *Brâhmaṇa*, a *Brâhmaṇa*, and not a *kshatriya* or any other; *niyoktawyah*, should be appointed, for deciding disputes.

25 Moreover, such a one possessing the particular qualities laid down by Kâtyâyana² should be made. Says he :—"He should be self-restrained³, high-born, impartial, not overawing, calm, god-fearing, religious, and devoid of anger."

1. Verses 57, 58.

2. See Verse 64.

3. दान्तं. The other reading is दक्षि vigilant.

In the absence of a Brāhmaṇa of this description, he should appoint a Kshatriya, or a Vais'ya, but not a Sūdra. As says Kātyāyana¹:—“Where a Brāhmaṇa is not available, he (i. e. the king) should appoint a Kshatriya, or a Vais'ya who knows the *Dharma-S'âstra*; a Sūdra should be avoided by all means.”

By Nârada² also this very thing has been indicated prominently :—“Placing before him *Dharma-S'âstra*, and adhering to the opinion of the Chief Judge, with a calm mind (or concentrated attention), he should decide suits in due order.” ‘Adhering to the opinion of the Chief Judge, i. e. not posting himself in his own opinion. As in the expression, ‘the king observes the enemies’ army with the eyes (in the form) of spies’, the term Chief Judge is here used in its etymological sense. He who questions the plaintiff and the defendant is a prâṭ; and he who sifts or discriminates their statements, the inconsistent from the consistent along with the assessors, a vivâka; he who is a prâṭ as well as a vivâka is a Prâdvivâka. Moreover, it has been said:³ “He is called Prâdvivâka, because, after consulting him, the king, in company with the councillors, decides disputes after an inquiry relevant to the matter at issue.” (3)

Viramitrodaya.

“Judicial proceedings he should himself personally investigate” thus it has been stated in the last book. When, however, that is not possible, the Author mentions a course

25

Yājñavalkya, Verses 3.

Owing to being absorbed in concentrating himself upon other matters and therefore unable to investigate judicial proceedings, by such a king, along with the councillors, a Brâhmaṇa knowing all laws and rules useful for a lawsuit should be appointed for the purpose of investigating law suits. This is the meaning. Here Kātyâyana⁴ states a

1. Verse 67.

2. Ch. I. 35.

3. By Vyâsa. See Smṛti Chandrikâ, P. 17, L. 3,

4. Verse 64.

special rule. "One who is self-controlled, well-born, impartial, not likely to create distrust, who is firm, afraid of the next world, devoted to religion, industrious, and devoid of anger." In the absence of such a Brāhmaṇa, a Kshatriya, or a Vaiśya should be appointed, so has been stated above.

5 So says Nārada¹: "The affairs of the ascetics should be got determined by only those who are learned in the three lores, as also of those who are versed in sorcery and witch-craft; and not himself, for fear of creating resentment." The meaning is that those from whose anger there may occur danger, the investigation of (the 10 disputes of) these should be caused to be made through men of their kind alone.

Even when a determination is made by himself, the co-operation of the Chief Judge is certainly contemplated. So observes Nārada²: "Placing before him the *Dharma-Sāstra*, and addhering to the opinion 15 of the Chief Judge, he should decide suits in due order, with a calm, i.e., concentrated mind." (3).

S'ūlapāni.

When the investigation of disputes is not possible to be made by himself personally, the Author states a course

One knowing well all laws i. e. of the country, the caste, and the rest. In the absence of a proper Brāhmaṇa, a Kshatriya, or a Vaiśya may even be appointed, as says Kātyāyana³: "If a learned Brāhmaṇa be not available, one may appoint there a Kshatriya, or a Vaiśya who knows the Dharma sāstra; a śudra, one should avoid with effort." So also Manu⁴: "A Brāhmaṇa who subsists only by the name of his caste (*jāti*), or one who merely calls himself a Brāhmaṇa, may interpret the law of the king, but never a Śudra. Of that king the administration of whose laws is made by a Śudra, the kingdom will sink 30 (low) like a cow in the mud." (3)

1. Not found in Nārada, but see Brhaspati, I. 27.

2. Ch. I. 35.

3. Verse 67.

4. Ch. VIII, 20-21.

The Chief Judge and the other councillors if out of passion &c. decide a dispute in departure from the dictates of the Smṛtis, then what should a king do? so the Author says

Yâjñavalkya, Verse 4

4. Out of passion, avarice, or even through fear, 5
councillors acting in departure from the rules of the Smṛtis
or from a similar cause, should each be separately punished
with a fine double of that in dispute.

Mitâksharâ:—Moreover, the aforesaid *Sabhyâḥ, councillors*, 10
on account of the uncontrolled sway of *Rajas*¹ or passion, being
affected by it, *râgât*, *out of passion*, i.e., on account of excessive attachment;
lobhât, *from avarice*, i.e., on account of excess in greed; *bhayât*,
from fear, or on account of excessive tribulation, *smṛtyapetam*, *in
departure from the Smṛtis* i.e. opposed to the Smṛtis. The term *Âdi*
or *from a simliar cause*, indicates doing something which is a
deviation from custom; *pr̥thak pr̥thak*, *severally*, each one severally.
Vivâdât, *of that in dispute*, of the amount accruing as damages 15
on account of a defeat in the suit; Should be punished with a *double
of the fine*, *dwigūṇam damam*; not however (double) of the amount
which is the subject matter of dispute. If it were so, there would 20
be the possibility of an absence of fine in disputes regarding
adultery or seduction and the like. The use of the words passion,
avarice and fear is to limit the double fine to (the cases of) passion
&c. only, and not to (extend it to the case of) ignorance, mistake &c.

Moreover, let it not be supposed in consequence of the 25
text of *Gautama*² viz. "a king has power
* [P. 3. L. 16.] over all, excepting *Brâhmaṇas*," that *Brâhmaṇas*,
are exempt from punishment, as the text is
intended to be eulogistic only.

As to what has been said³ viz., 'that he (i.e. a *Brâhmaṇa*, 30
should be exempted by the king from six (punishments), viz. that
he should not be killed, imprisoned, punished, exiled, deported or

1. The second of the three qualities viz. *Satva, Rajas* and *Tamas*.

2. *Gautama* 11, 1.

3. *Gautama* VIII. 12, 13.

made destitute (deprived of his effects),’ that holds in the case of one¹ “ who is a well-read scholar, one who knows the usages of the people, who is versed in the Vedas and the Vedangas, who is an expert in the art of controversy (or in expounding controversial points), in History and the Purāṇas, who is a constant student of the same, and who follows them in life, who is purified by the forty-eight purificatory ceremonies,² who devoutly observes the three duties³, or one who has been trained in the six⁴ customary duties of life.” Thus it (*i.e.* the exemption) applies only to one who has acquired a versatility of knowledge as detailed above and not to any Brāhmaṇa merely as such. (4)

Viramitrodaya.

For the Councillors giving an unjust decision, punishment should be administered by the King ; so the Author says

Yājñavalkya, Verse 4.

On account of being oppressed by passion, etc., in departure from the *Smṛtis*, *i.e.*, opposed to the *Smṛtis*—by the use of the word *ādi*, etc., ‘opposed to the usage of the country’ &c. also should be included. *Sabhyāḥ*, ‘Councillors’, for the purpose of investigation appointed to the assembly, as far as the Chief Judge, *prthak prthak*, ‘separately’ each one, *vivādāt*, ‘of that in dispute, consequent upon a defeat in the dispute under consideration, from the penalty in the form of an imposition of a money fine, *dwigunam damam*, ‘double the penalty’, *dānyāḥ*, ‘should be punished’, *i.e.*, should be made to pay.

By the use of the word *api*, ‘or also’, are included those not known. So says Kātyāyana¹: “ After correctly comprehending the result of the suit, the Councillor should then speak ; otherwise one must not speak ; he who speaks gets twice the penalty. By reason of the

1. Gautama VIII. 4-11.

2. *viz.* Gautama details these at Ch. VIII. 14-22.

3. These are : study, sacrifice, and almsgiving (अध्ययनेज्यादानानि).

4. These are : the three last with the addition of अध्यापनयाजनप्रतिग्रहः Teaching, officiating at a sacrifice, and receiving gifts. See *Yājñavalkya* I. 118,

5. Verse 80-81.

fault of the Councillor, whatever is lost, should be replaced by the Councillor as it was before ; a dispute, however, when settled by the disputants themselves, one should not investigate.”

Thus what has been decided after a proper deliberation may be considered again, and no penalty (should be imposed) out of irritation due to the defeat of the plaintiff. 5

There, “Councillors declaring an unjust decision, and similarly those who subsist on bribes, as also those who are guilty of a Breach of Trust, all these must certainly be banished”, the (rule of) punishment thus declared by Brhaspati should be observed. (4). 10

S'ulpaṇi

Yājñavalkya, Verse 4.

These, the councillors declaring falsely, should each be punished with the penalty double that for the defeated party. By the use of the word *api* ‘even’ is included one digressing away from the judicial proceeding (4). 15

The Author mentions the nature of a *Vyawahāra*

Yājñavalkya, Verse 5.

If one injured by others in a way which is a violation of the (laws of) Smṛtis and usage, informs the king, that becomes a (fit) subject for a Judicial Proceeding. (5) 20

Mitāksharā :—**Mārgēṇa**, *in a way*, opposed to legal science and general usage, **paraiḥ**, *by others*, **Subject-Matter** **âdharshitah**, *injured*, i.e. attacked ; which, **rājñe**, of a suit. *to the king*, or to the Chief Judge, **âvedayati**, **25** *informs*, i.e. respectfully complains, **Chet**, *in case*, *of that*, **tad**, which forms the complaint, is the *subject matter of a judicial proceeding*, **Vyawahārapadam**. **Vyawahāra** or a judicial proceeding is that which has for its component parts, the plaint, the answer, the doubt, reasons, deductions, the evidence, the decision and the reasons thereof ; its **pada**, its (*i. e. of Vyawahāra*) subject. 30 This is its general definition.

That (*Vyawahāra*) moreover, is twofold : a plaint founded on suspicion, and a plaint founded on facts. As says Nārada¹ :—“ A

1. I. 27.

plaint is known to be of two kinds ; a plaint founded on suspicion, and a plaint founded on facts ; (on) suspicion in consequence of (defendant's keeping) bad company ; (on) facts, when the stolen goods have come to light". By *Hodhā* is meant, the goods stolen or any other evidence (thereof). By "goods coming to light", therefore is meant, tracing (the offence) by circumstantial or direct proof. A plaint founded on facts is moreover two-fold ; (1) Containing the statement of a denial ; and (2) containing the statement of an active wrong (by the defendant). As e. g. "Having taken gold &c. from me, he (the defendant) does not give it back.", "He (the defendant) deprives me of my land &c." Kâtyâyana¹ also has said :—"who *does not* himself wish to do what is just, or *does* an unjust act."

This (*Vyawahâra*) moreover is divisible into 18 kinds. As says Manu²:—

* Page 4. "Of these (1) the first is the Recovery of debts ; (2) Deposit, (3) Sale without ownership, (4) Concerns of several partners together, (5) and Resumption of gifts. (6) Non-payment of wages, (7) Breach of contract, (8) Rescission of sale and purchase, (9) Disputes between the owner (of cattle) and his servants ; (10) the law of Boundary-disputes, (11) Assault, (12) and Slander ; (13) Theft, (14) Heinous offences. (15) Adultery or seduction ; (16) Duties of husband and wife ; (17) Partition ; (18) and Gambling and betting. These are in this world the eighteen topics of Judicial Proceedings. Even these have become multiplied into many more by the varieties of the points at issue. As says Nârada³ :—"Their branches amount to one hundred and eight. It (a judicial proceeding) is said to have a hundred branches on account of the multifariousness of human transactions."

The author points out that by the expression 'if he informs the king' is meant, he himself voluntarily goes and informs, and not under instigation of the king or his servants. As says Manu⁴ :— "Neither the king or any servant of his shall themselves cause an

1. Verse 139. न्यायस्थि is another reading.

2. Ch. VIII. 4-7.

3. I. 20.

4. Ch. VIII. 43.

action (lawsuit) to be started, or hush up one that has been brought by another.”¹ *Paraiḥ, by others, i. e.* by one, two, or many others; the Author indicates hereby that a dispute may arise between one man, and one, two, or many men. The text of Nārada *viz.*—“Men conversant with law lay down that disputes between one and many, with women, and with servants, are inadmissible as a suit” refers to suits having different causes of action. 5

By the expression ‘informs the king’ is also meant ‘that clad in a decent or simple dress, the plaintiff should inform the king’ when questioned by him. When the complaint is proper, (*i. e.* according to law), then the summoning of the defendant by sending a seal &c., and the non-summoning of those that are beyond the court’s jurisdiction, or exempt from it (as being afflicted with disease) being evident from the context, has not been expressly mentioned. This, moreover, has been clearly laid down in another Smṛti²: “At the (proper) time, he (*i. e.* the king or his proxy) should thus inquire of the applicant³ standing and speaking before him: what is your suit for, and what is your grievance? Don’t fear, speak, O man! By whom, where, when and for what (have you been) troubled? Thus should he ask one who has come to the court. Thus interrogated, what he speaks (as his grievance) he (*i. e.* the king) should consider along with the Councillors and the Brāhmaṇas; and if the complaint be proper or one according to law, (an order bearing) the seal, or a messenger, should be sent to summon him (defendant). 10 15 20 25

“The king should not cause to be summoned a person who is afflicted with a disease, a minor, the old, one in difficulty and one engaged in (religious) duties; (nor) a person who would suffer great loss⁴ if he were summoned, a person afflicted with pain (caused by the separation of relations); persons engrossed in the king’s service, or in celebrating festivals; the

1. The Bālambhaṭṭi and the Viśwes'wari give an alternative meaning thus: “nor should he accept a plaint presented unjustifiably by a party.”

2. Kātyāyana Verses 86–88.

3. Plaintiff:—*Lit:* one who pleads his cause in court. The reading given in the foot-note is adopted: another reading is ‘standing in a humble posture.’

4. Bālambhaṭṭi P. 9 L. 5 &c.

intoxicated ; persons possessed by evil spirits ; idiots or the insane ; the aggrieved, or persons who are dependents ; (nor) a young and helpless woman, a high-born lady, a woman recently delivered, a maiden belonging to the highest tribe; (because) these females are declared to be dependent on their tribes. ¹A summons is allowed against women upon whom their families are dependent, profligate women, and those who are prostitutes, as also against such as are of low birth or are degraded. Taking into consideration the time and the place, as also

the importance or otherwise of the cause, the king may cause even the infirm &c. to be summoned and brought comfortably by means of conveyances. He may even summon, in weighty matters, hermits and the like, who have retired into the woods, after² notice of the complaint³ taking care however that he thereby does not give any offence."

The law of arrests which is plain in itself, has been laid down by Nârada⁴ :—“A plaintiff should arrest a

Arrest.

defendant who absconds when the cause is about to be tried, and one who disregards the plaintiff's

words, until the legal summons has been issued. Confinement to a place, arrest for a limited time, restrictions regarding travelling, and prohibition from a specific act ; this is the fourfold division of arrests. One subjected to an arrest must not transgress

it. If one arrested at a time proper for arrests transgresses his arrest, he should be punished. One who, in causing an arrest, acts improperly, shall also be liable to punishment. One arrested while crossing a river, or in a forest, or in a bad country, or during a great calamity, or while in similar predicaments, commits no fault by transgressing his arrest. One about to marry, one oppressed by a disease, one about to offer a sacrifice, one afflicted by a calamity, as also one (already) accused by another, and one engaged in the king's service ; (as also) cowherds engaged in tending cattle, cultivators in

1. Verses 97, 98.

2. ‘At their leisure and by means of conveyances’ *Bâlambhatti*.

3. ज्ञात्वा अभियोग—or it may also be rendered “having ascertained the importance of the complaint.”

4. I. 47-54.

the act of sowing the crops, artisans while engaged in their own occupations, and warriors during warfare.

Arrest means a restraint by the king's orders. The weak and others (exempted) shall depute their son or some

*PAGE 5. other relative; and these (relatives) will not become liable for speaking without authority for

another, as will be seen from the text of Nârada¹: "He, who is not either the brother, the father, or the son, nor is one acting under an order or authority of another, and speaks for him, deserves punishment; as does he who makes contradictory statements in judicial proceedings." (5).

Viramitrodaya

The investigation of a Judicial Proceeding (*Vyavahâra*) being dependent on the knowledge of the subject of a judicial proceeding (*Vyavahâra-vishaya-jñâna*) the Author mentions generally the subject of a *Vyavahâra*

Yâjñavalkya, Verse 5.

Mârgena 'by a way', i.e., means which is outside the *Smritis* and good usage; *parairâdharshitah*, 'by others injured', i.e., outraged; *râjñe*, 'to the king', of the attack by another, *avedayati*, 'informs', *tat*, 'that', then becomes *vyavahârasya padam*, 'the subject for a judicial proceeding', such as the Recovery of Debts and the like.

By the use of the word *chet* 'if', it has been indicated that the initiation of a dispute should not be started by himself. That has been stated by Manu²: "Neither the king nor any servant of his shall themselves cause any action (law suit) to be started, or hush up one that has been brought by another." The reading *yad*³, 'which', is approved of Mis'ra and others. Which, e.g., the Recovery of Debts and the like he informs that should be utilised.

The plural in *paraih*, 'by others', is where the matter at issue is one. Where, however, the points at issue are different, the text of Nârada⁴ applies: "Of one with many, against women, or against agents, a dispute is admissible."

1. Ch. II. 23;

2. Ch. VIII. 43.

3. In the place of *ehet* (ेत्) if,

4. Ch. II. 12. first quarter.

By the use of the word *hi*, ‘indeed’ it is intended that what has been complained of, must necessarily be investigated. There, Brhaspati mentions a special rule “The preceptor and the pupil, the father and the son, the husband and the wife, the master and servant, of these when brought together, a dispute is not permissible. Of one with many, with women, and with servants, a dispute is inadmissible, as has been declared by the learned. That which has been excluded by the king, as also that which is likely to be against the interests of the citizens, or of the nation in entirety, as also similarly of the subjects. Others also as are antagonistic to (the interests of) the City, village, and the people in general, all such disputes have been declared as inadmissible.”

That subject of a judicial proceeding, moreover, generally is of two kinds, from a plaint founded on suspicion, and a plaint founded on certainty. A plaint, moreover, is two-fold, in the form of an assertion and in the form of a denial ; as ‘my gold has been taken away by him’, and ‘Having taken money as a loan from me, he does not give.’ As says Kātyāyana² :—“What is just, he himself does not wish to do, or who does what is unjust”. Manu³ particularly classifies the topics for a judicial proceeding thus: “Of these, (1) the first is the recovery of debts, (2) deposits, (3) sale without ownership, (4) concerns of several partners together, (5) and resumption of gifts, (6) non-payment of wages, (7) breach of contract, (8) rescission of sale and purchase, (9) disputes between the owner (of cattle) and the cowherds, (10) the law of boundary disputes, (11) assault, (12) slander, (13) theft, (14) heinous offences, (15) adultery or seduction, (16) duties of husband and wife, (17) partition, (18) gambling and betting ; these are in this world the eighteen topics of Judicial Proceedings.” (5).

S'ulapāṇi.

Yājñavalkya, Verse 5

In a way outside the *Smṛtis* and good usage, one pursued by another, either monetarily or bodily, one complains when troubled, that is the point for the investigation by a Judicial Proceeding. That is of eighteen kinds, so says Manu³ : “Of these (1) the first is the recovery of debts, (2) deposit, (3) sale without ownership, (4) concerns of several partners together, (5) and resumption of gifts, (6) Non-payment of wages, (7) breach of contract, (8) rescission of sale and purchase, (9) disputes between the owner (of cattle) and the cow-herd, (10) the law of boundary disputes, (11) assault, (12) slander, (13) theft, (14) heinous offences, (15) adultery or seduction, (16) duties of husband and wife ; (17) partition ;

1. See Nārada II. 12, last quarter.

2. Verse 139.

3. Oh. VIII. 4-7.

(18) and gambling and betting; these are in this world, eighteen topics of a Judicial Proceeding.

By the expression if he 'informs', is meant that by himself a dispute should not be started. Brâhaspati states a special rule, "The preceptor and the pupil, the father and the son, the master and servant, of these if brought in conflict together, a judicial trial cannot be admitted" (5).

When the defendant is brought by one of the (three) modes, *viz.*, by the signet, the written order, or the messenger, what further should be done? So the Author replies 10

Yajñavalkya, Verse 6.

In the presence of the defendant should be reduced to writing whatever is alleged by the plaintiff, and marked with the year, the month, the fortnight, the day, the name, the caste, and the like. 15

Mitâksharâ :—What is asked for is the *artha*, (the relief sought) the object to be accomplished; and a plaintiff (*Arthî*) is the one who sets it up. His opponent is *pratyarthî*, the defendant.

Before, agrataḥ, tasya, (of) him, i.e., in the

The Charac- presence of him, *lekhym*, *should be written*, should teristics of a be reduced to writing. *Yathâ, whatever*, in which Plaintiff mode *i.e.*, as alleged before at the time of making

the first complaint; and not otherwise; for in that case on the ground of departure (from the first complaint) the trial would be vitiated. For¹ "one who alters his former statement, one who shuns the judicial proceeding, one who does not put in an appearance, one who makes no reply, as also one who absconds after being summoned; these are the five varieties of a faulty (*Hina*) litigant."

1. Nârada II. 33. Kâtyâyana states the several amercements for these; thus: see verse 202.

अन्यवादी पणान् पंच क्रियाद्वेषी पणान्दश । नोपस्थाता दशद्वौ च षोडशैव निश्चरः ॥
आदृतप्रपलयी च पणान् प्राह्यस्तु विशानिम् ।

The allegations of the plaintiff having been once reduced to writing at the time of the first compaint, it

P. 5. L. 9.

might be said that writing it over again would be meaningless, so the Author says: *Samā-*

5 *māsetyādi, year, month &c.*—marked with the year, month, fortnight, date, day &c., as also bearing the names of the plaintiff and the defendant, and their castes such as Brāhmaṇa &c. By the word *Ādi, &c.*, are also included the amount, the quantity, place, time, reason for forbearance¹ and the like (*Adīni*). As has been said²:—

10 “That is termed a plaint or complaint, which is presented or made to the king, and which contains (the *Artha*)

P. 5. L. 12.

the cause of action, which is in accordance with the law, which is complete and devoid of

15 confusion, which contains the point at issue, which is couched in significant language, and which is consistent with the claim made out ; (which is) intelligible, not inconsistant, certain, capable of proof, concise yet bringing out the whole cause of action, not impossible in regard to place or time ; which contains the year, the season, the month, the fortnight, the day, the time, the country and the particular

20 district, the village, the house or dwelling place, the point at issue, the designation, the caste, the personal description and age ; which contains the measure and quantity of the object to be secured, the names of the plaintiff himself and of the defendant, and (which is) marked with the names of the ancestors of himself and of the defendant

25 respectively, as also with the names of kings ; (which contains) the cause¹ of forbearance and the injury done to self (the plaintiff) ; in which are mentioned (the names of) the grantees and the grantor.”

Bhāṣṭā is the same as *Pratijñā* or *Pakṣha*. It has no other meaning.

The point to be noted is that at the time of the first complaint, only 30 the cause of action is written, while in the presence of the defendant, the year, the month, and other particulars are written.

Although the specification of the year is not necessary in all proceedings, still it is essential in trials concerning

P. 5. L. 19.

deposits or pledges, gifts, and sales, on account of the text:³ “In the case of pledges, gifts, or

1. ज्ञातिंग—Reason for forbearance—i. e. where the suit is apparently brought after the proper time, plaintiff has to explain the delay.

2. Bālambhaṭṭi refers to this as the text of Nārada, but it is not found there.

3. Yajn. II. 28,

sales, prior transactions have preponderance". And also in money disputes, such as in a case where a certain definite amount was borrowed by a certain person and was repaid in the same year, and again in another year the same amount was borrowed by the same person, but on demand he sets up repayment, the utility of the prescribed rule would be that payment and repayment in another year would be proved. The same (rule) would apply in the case of months. The provisions regarding (the specification of) country, place &c. however, apply only in transactions concerning immovables, on account of the (following) text:¹: "In suits for immovable property, these ten (particulars) should be entered in the plaint viz. the province, the village or town, so also the particular site, the caste and names (of plaintiff and defendant), the names of neighbours, the measurement and (descriptive) name of the field, the names of the father, the grand-father &c. as also a description of former kings." *Country*, e. g. Central Province &c.; *Place* or village such as Vārāṇasi &c.; *Particular site* i.e. house, field &c. of the same village (town) properly identified and marked out by the specification of boundaries on the East, West, &c. *Caste*—i. e. of plaintiff and defendant such as Brāhmaṇa &c. *Name*—i. e. Dēvadatta &c. *Neighbours* i. e. people residing on the adjoining land. *Measurement* i. e. of land such as a *nivartana*², *Name of the field*—such as—a rice-field, or a rotation-crop field; black-field, white-field &c. And also names of the *father* and *grandfather* of the plaintiff and the defendant; and also a *specification of names* of the three previous *kings*. The object intended is that the year, month &c., in each transaction should be written as much only as is necessary for that transaction.

Such being the characteristics of a plaint, those (plaints) which are wanting in these essentials, but present

* Page 6. an illusory appearance of a plaint, are evidently 30 vicious *plaints*, and so vicious *plaints*, have not been separately mentioned by the Lord of Yogis³ (*Yogis'wara*).

Others⁴ have mentioned for the sake of (greater) clearness: "The king should discard a vicious plaint, which, is impossible, does

1. of Kâtyâyana. 127, 128.

2. i. e. 20 rods.

3. i. e. the sage Yājñavalkya.

4. see Bṛhaspati III. 6, 9, 10; and Kâtyâyana 160.

not disclose any injury (to plaintiff), is meaningless or causeless, cannot be proved, and which is contradictory." *Impossible*, as e.g. 'the defendant having taken my hare's horn, does not return it,' *Containing or disclosing no injury*, as e.g. 'the defendant moves about in his house in the light of the lamp of my house'. *Meaningless*, i.e. devoid of a definite meaning e.g. ka, cha, ta, ta, pa, ja, da, da, ba, &c. *Causeless*, as e.g. this Devadatta reads in a charming voice near my house &c. *Incapable of proof*, as e.g. "I was ridiculed by Devadatta with the knitting of his brows"; this is incapable of proof on account of the impossibility of the means (to prove it). Having a transitory character, (there is) no possibility of (obtaining) a witness much less a writing; nor, being trifling, would it (the fact) be amenable to an ordeal. *Contradictory*, as e.g. "I was abused by a dumb man" &c. Or such as are opposed to the (usage of the) town, nation &c.

These are refutable by their very nature, and therefore are not specified. Even here "the *impossible* &c.,"

L. 8. are selected as illustrations for the sake of explanation,¹ that too does not put away a

20 plaint which is a combination of several counts. "All the following plaints are declared as inadmissible, viz. that which is prohibited by the king, which is hostile to the (interests of) citizens, or to the whole nation, or to the ministers; as also others which are hostile to the usages of the city, town or eminent citizens"

25 It has been said above that "a complaint which joins together several causes of action is not allowed"; but

L. 13. there would be no fault in such a case, if it is expressly described as a plaint 'mixed up of many objects', it being unobjectionable to allege that "my gold, clothes, or silver has been taken away by this man."

1. व्युत्पत्ति :—Means a clearer explanation by drawing attention to the component parts of the sentence or words, as opposed to a rough, or general, or popular conception. It is the same as तत्त्वतः ज्ञान sometimes used elsewhere.

The meaning is that we know, without this text, that plaints which are अप्रसिद्ध are पक्षाभासां and must be rejected; still the text is used to make the gist of the meaning of the word पक्ष clear. By व्युत्पत्ति here is meant the व्युत्पत्ति of the word पक्ष. तदपि, still these several texts (denoting पक्षाभासां) do not include the case of अनेकपदसंकीर्ण. For it is not a case of पक्षाभास at all, as the only defect of that plea is that it cannot be gone into simultaneously.

If it be said that a plaint becomes vicious on account of mixing together several counts in suits for 'the recovery of debts' &c., that too will not hold. For, the plaint is allowable which contains averments like the following, viz. 'He borrowed my rupees at interest', 'I delivered gold into his hand' and 'he deprives me of my field.' Only (in such cases) on account of a difference in the causes of action the trials are held separately in succession and not all together. As says Kâtyâyana¹: "A king, desirous of arriving at the truth, may undoubtedly admit even that plaint which contains several counts, but which is in conformity with the principles of law." Therefore the meaning of the rule is, that a plaint containing several counts will not be allowed to be established in all the counts at one and the same time. 5
10

The word (*Arthī*) plaintiff, includes his son, grandson &c., as they have a common interest. One specially appointed as an agent, is also presumed to have an identity of interest on account of the appointment, according to the text²—"If one is deputed by the plaintiff or is chosen by the defendant as his representative, his success or defeat is regarded as that of the party for whom he (the representative) pleads." The success or defeat of the agent or representative is of the original principal only. 15
20

This, moreover, should be jotted down upon the ground or on a board with white chalk, and after it has been

L. 21. revised and corrected by rubbing off and rewriting,
it should be written down upon a paper, according

to the following text of Kâtyâyana³ viz. "The *Prâdvivâka* or the Chief Judge should get down the plaintiff's statement, as made by him in his own way, on a board in white chalk, and then on a paper, after it has been revised." The revision and correction should be made only while yet the answer (of the defendant) has not been filed, and not thereafter, as otherwise there is the fear of the proceeding never ending. 25
30

1. Verse 137.

2. Of Nârada I. 22.

3. Verse 131.

Hence Nârada¹ has said: “ He (*i. e.* the Judge) may make corrections in the complainant’s first complaint so long as the answer is not received; being stopped by the answer, the correction should cease.” If the Councillors cause an answer to be filed without revising the plaintiff’s first complaint, then the Councillors should be punished according to the punishment laid down in the text² (*Râgâllobhât &c.*) “out of passion, avarice &c.”, and the trial should be re-commenced by the king, commencing with the solemn affirmation.

Viramitrodaya.

10 Such a Judicial Proceeding has four feet (or parts), so as the Author will state hereafter, there, first in the part regarding the Plaintiff, the Author states the function of the king³

Yājñavalkya, Verse 6.

Arthindā, ‘by the Plaintiff’, Pratyarthino-agrato, ‘in the presence of the Defendant’ should be caused to be written. Samā, ‘the year’; māsaḥ, ‘month’ is well-known; tadardham, ‘half of that’, *i.e.*, the fortnight; ahāḥ, ‘the day’, these are the periods for a plaint, *i.e.*, these periods of time are for the part dealing with the Plaintiff. Nāmajāti, ‘name and caste’, *i.e.*, of the Defendant, as also of himself.

20 By the use of the term A’di, ‘and the like.’, are included, the quantity of the amount and the like stated by Kâtyâyana⁴ thus: “The amount of the claim, the material and the quantity; similarly the name of oneself and also of the kings in successive order, of the place of residence, also the name of the object in dispute, and in genealogical order the names of ancestors, the (nature of, the) injury, the grantor and the grantee, and also other causes for forbearance—these should be stated in the plaint, and (the plaint) constituted.

By this—“ In such and such a year, such and such a month, of myself by name such and such, the grandson of such and such, the son of such and such, and of a particular caste, by such and such a one, the

1. Not found in Nârada; but see Brhaspati III. 15.

2. Yājñ. II. 4. p. 643 above.

3. *i.e.*, either the king himself when personally attending to the investigation or the Judges appointed by him.

4. Verses 125, 126.

grandson of such and such, the son of such and such and by name such and such, within the territory of such and such a king, so much quantity of gold was taken as a loan, for the repayment of that, a demand was not made by me upto such and such a time out of regard for his friendship; or was demanded in the last year, &c., thus, containing these and like recitals comes to be the body of the written complaint to the king. But there, 'you owe me a hundred of gold, you having obtained from me as much amount as a loan', is the body of the Plaintiff, 'You should give', is the expression of the relief, while the rest is useful for a decision. Thus, where as much portion of the complaint becomes established, so much should be stated by the Plaintiff in the plaint, and be caused to be written by the king, otherwise it should be noted that there may be the fault of an undisclosed proof. The magnitude of the amount as also an excessive cause of trouble may also be included in addition. In regard to that also, justice which is asked for, must be included in the first information.

'By the plaintiff'—this is where it is possible. When, however, he is not available, says Nārada¹: "If one be deputed by the claimant, or chosen as his representative by the defendant, he for whom he speaks, of those shall be the victory or defeat. (22). He, who is not either the brother, the father, or the son, nor is one acting under an order or authority of another, and speaks for him, deserves punishment; as does he who makes contradictory statements in judicial proceedings." (23).

Bṛhaspati²: "For persons of immature intellect, for the dull, the intoxicated, the old, the women and for persons suffering from a disease, one may depose for a plaint or an answer, even though the man may not have been appointed."

In some cases, however, Kātyāyana³ prohibits an agent thus: "In accusations for Brāhmaicide, drunkenness, theft, sexual intercourse with the preceptor's wife, a representative is not allowed, and even in similar other accusations such as, for homicide, theft, crim. con. with others' wives, eating the uneatable, as also abduction and despoiling of a maiden; for abuse, false measures, similarly for hatred against the king, a representative must not be permitted to be given; the Actor must plead in person."

The duties preceding the plaint, either of the king, or of the Complainant, being too well known in other *Smṛtis* have not been stated

1. Intr., Ch. II. 22-23.

2. Ch II. 34.

3. Verses 93, 94, 95,

by the Author of this work. e.g., says Kātyāyana¹, “When a party is in possession of a thing seized by him, a trial should not be started by the king ; it should either be restored to him, or it should be deposited with a third party.” And Nārada² : “One who absconds when the cause is to proceed, who disregards the plaintiff’s words, such a defendant the plaintiff may arrest, pending the summons being served (47). If one arrested at a time proper for arrests, transgresses his arrest, he should be punished. One who, in causing an arrest, acts improperly shall be liable to punishment” (51). Also, “One arrested while crossing a river, or in a forest, or in a bad country, or during a great calamity, or while in similar predicaments, commits no fault by transgressing his arrest.” (49). So, “One about to marry, one oppressed by a disease, one about to perform a sacrifice, one afflicted by a calamity, as also one who is accused under the law, as also one engaged in sowing operations (52). Cowherds engaged in tending cattle, cultivators in the act of gathering the crops, artisans also during the period while engaged in their occupations, and warriors during warfare (53). One who has not yet arrived at years of discretion ; a messenger, one about to give alms, one engaged in a vow ; those in difficulties also, must not be arrested, nor should the king summon them” (54).

Here, the excellence of the Plaintiff is ‘brief in words, but rich in meaning’ as stated by Brhaspati³ and others.

Of the faults, such as stated in the text⁴: “Impossible, faulty, meaningless, causeless” and the like, and their absence has been indicated by the prefix *āñ* in the expression *ā-veditam*, ‘alleged’; these, moreover, through fear of swelling the treatise are not being expanded here.

Plaintiff, however, must not depose contrary to his first information, as says Brhaspati : “That matter, moreover, which one alleges, one must not change in form ; nor should he resort to another alternative ; if he resorts, he is (deemed to be) defeated in regard to the first.” Before, however, the investigation commences, there is no loss to the plaintiff depositing more or less. That says Nārada⁵ : “Before the answer to the plaint has been tendered by the defendant, the plaintiff may amend his own statements so long as there is no sight of the

1. Verse 120.

2. II. 47, 49-54.

3. See Ch. III. 6.

4. Of Kātyāyana Verse 140.

5. Ch. II. 7.

answer. Of one who has been blocked by an answer, all writing ceases". Here the word answer is used in the sense of the commencement of the investigation vide the text of Br̥haspati¹: "When both parties have submitted their statements in writing and the investigation of the truth has commenced, he who deposes there improperly does not lose the point. When the answer to the plaint has been filed and the investigation has been entered upon, the statements of the disputants in that proceeding are purified², so says Bhṛgu. "If through infatuity, or through cunning, a statement is not made by the plaintiff, but is offered in the midst of the answer, that may be accepted for both³. What is heard, written and also purified and considered."

Regarding purification says Vyāsa: "With a white chalk on a board, and in the absence of a board, on the ground, one should write; and after revising any defect or superfluity, it should thereafter be entered in the paper." For the falsification of record, Kātyāyana⁴ states a punishment. "One who writes anything else than what is stated by the plaintiff or by the defendant, the king following the law should punish such a one as a thief." (6).

S'ulapāṇi

'Of four feet is this Judicial Proceeding', so the Author will state hereafter; of that the first, of the foot dealing with the Plaintiff, the Author states

Yājñavalkya, Verse 6.

Of a Plaintiff the substance of which is known can alone a reply be possible; therefore, in the presence of the opponent, the plaint should be caused to be written. 'One when asked, must state the Plaintiff,' so it has been stated. In the plaint should be written the year, the month &c. In the expression 'caste &c.', by *et cetera* are to be taken, "the point at issue, similar⁵ objects, the quantity, and similarly one's name" specified in another Smṛti⁶.

1. स तर्थान्तं हीयते—It appears, there is a mistake in this quotation. The Smṛti-Chandrikā (p. 48, L. 13) cites this text as of Kātyāyana, where the reading is तस्मादर्थान्तं हीयते. Mr. Kane's compilation of Kātyāyana also gives the same reading. See verse 206, p. 29.

2. i.e., by the process of आवाप and निर्वाप referred to in the Mitākṣharā under the text cited in *Viramitrodaya*; and S'ulapāṇi, who cites the text of Kātyāyana; p. 131. see also the text of Vyāsa further on at l. 12.

3. Kātyāyana 193. This text is cited as the text of Br̥haspati in Smṛti Chandrika, and the 2nd half is प्रश्नम् ये मिथो यान्ति दायास्ते द्विगुणं दमम् (h. 49, l. 22).

4. Verse 132.

5. i. e. of Kātyāyana, Verse 125, where the reading is साध्यप्रमाणं द्रव्यंच संख्या नाम तथात्मनः।

Who will have the position of a plaintiff? So Nārada¹ says, "He who has had greater trouble, or whose object is of greater magnitude, to him should be given the right to begin as a plaintiff, and not the one (necessarily) who lodges the information first." Brhaspati² states the characteristics of a Plaintiff: "They know a plaint to have five points, viz. free from the faults regarding a declaration, with the point which is susceptible of proof, accompanied by good arguments, precise, and well-established³ among the people. (6). Brief in words, rich in meaning, absolutely free from ambiguity and confusion, devoid of conflicting arguments, and capable of meeting the opponent's arguments."

Kātyāyana⁴ states a special rule: "The Judge should cause to be written the first information as originally deposed on a board with a white chalk, and then on a parchment after it is corrected." (6).

Thus after the plaintiff's revised complaint has been written down upon paper, what should be done? so the Author says

Yājñavalkya, Verses 7 (1).

Of the defendant, who has heard the plaint, the answer should be taken down in writing, in the presence of the plaintiff or the complainant. 7 (1).

Mitāksharā :—S'rutartha i. e. the defendant—is one by whom the substance of the plaint has been heard, The Answer. S'ruto; of that the answer. It is called the answer or replication because it appears after the plaintiff's complaint. Le'khyam, should be taken down in writing, i. e. should be reduced to writing.

In the presence of Sannidhau, of the first informant, pūrvāve'dakasya, the plaintiff i. e. near him. An answer is that which is a refutation of the complaint of the plaintiff. As has been said⁵:

1. Not found in Nārada, but this is cited as a text of Kātyāyana, (V. 122) in अपराक्ष and other works.

2. Ch. III. Verses 5, 6, cited in Raghunandana p. 12 (Jolly).

3. लोकसिद्धं च.

4. Verse 125.

5. By Prajapati. See Smṛtichandrika p. 42. I. 30.

"Men versed in law consider that an answer, which covers (the points raised in) the plaint, is concise, unambiguous, not inconsistent, and is easily intelligible without an explanation." Which

* P. 7. covers the points in the plaint i. e. is capable of refuting it. Concise i. e. according to (the rules

of) justice, not inconsistent with justice. Unambiguous i. e. free from doubt. Not inconsistent i. e. not contradicting statements made before and after. Not intelligible without an explanation, i. e. the meaning of which requires an explanation on account of the use of obscure words, or on account of the implication or express use of cases and compounds (which are) difficult to split up, or by reason of the use of expressions (current only) in the language of foreign countries. That which is not so tainted is called a proper answer.

P. 7. L. 4. That, moreover, is four-fold viz. admission, denial, confession and avoidance, and former Fourfold answer. judgment or *res judicata*. As says Kâtyâyana.¹

"An answer is fourfold viz. by pleading the truth or the falsehood (of the plaint), or by setting up a special plea, or a decision in a former judicial proceeding." Of these an example of the answer by admission, *Sampratipattih*, may be found in the case where the defendant, being charged by the plaintiff that he owed a 100 rupees, replies by saying "yes, I do owe (the amount)." As is said²: "It (i. e. an answer) is called an admission, when the truth of the point at issue is admitted." An answer by denial, *Mithyâ*, is on the other hand made by saying, "I do not owe (the amount)." So also Kâtyâyana³: If the defendant give a denial to the claim made, that (answer) is known in law as a denial."

Such a denial moreover is of four kinds: as e. g. 'This is false', 'I do not know at all', 'I was not present there at the time (of the transaction)' and 'I was not born at the time'; thus four-fold is an answer by denial⁴.

1. Verse 165.

2. by Kâtyâyana Verse 168.

3. Verse 167.

4. Nârada Ch. II. 5; Also Kâtyâyana 169.

The (answer by) confession and avoidance, *Pratyawaskandanam*, is, e.g. thus: "true it is that I received, but I returned

P. 7. L. II. it, or obtained it as a gift." As says Nârada,¹ "If a defendant, admitting plaintiff's written

5 allegations, sets up a plea, that is called a confession and avoidance." The (answer by a) former judgment, *Prânyâyam*, or *Res Judicata* would be where the defendant would speak thus, 'I was sued by him on this cause of action, and in that suit he was defeated in a trial at law'. It has also been said by Kâtyâyana²: "If a person, though 10 defeated by the customary procedure, again files a written complaint the answer to him would be, 'you were defeated formerly'; this is called the plea of former judgment."

The characteristics of a proper answer having thus been established, the viciousness of those answers which 15 P. 7. L. 17. are without the characteristics of a proper answer, but which bear the resemblance of an answer, is self-evident. This has also been made clear in another Smṛiti³ "That answer which is dubious, departs from the point at issue, is either too short or too long as compared with the point at issue, 20 covering only a portion of the claim, and is of the like sort, cannot be called a proper answer. An answer which is irrelevant, incomplete, of concealed import, and is inconsistent, as also that which can be understood by an explanation (only), and which is unreasonable, is not an answer which will establish the plea set up". Of these: 25 *Sandigdham*, 'a dubious answer' is e. g. where it is alleged that defendant borrowed 100 gold coins, the defendant answers 'yes, I did borrow (something) but (I am) not certain whether 100 gold coins or 100 *Mâshâs*'.⁴ *Prakrîtâdayat*, 'Departs from the point at issue,' as where in a suit for 100 gold coins, the defendant 30 answers 'I owe 100 *panas*'. *Atyalpam*, 'Too small,' as where in a suit for 100 gold coins, the answer is 'I owe five.' *Atibhûri*, 'Too large,' as where in a suit for 100 gold coins, the defendant answers

1. Cf. Kâtyâyana 170.

2. Verse 171.

3. Cf. Kâtyâyana 174, 175.

4. A gold measure, $\frac{1}{20}$ th part of a पण्. "माषो विशंतितमो भागः पणस्य परिकीर्तेतः".

'I owe two hundred'. *Pakshaikades'avyāpi*, *Covering only a part of the claim*, as where in a suit for (recovering) gold, clothes, &c., the defendant answers—'only gold was recovered, nothing else'. *Vyastapadam*, *Irrelevant*, as in a suit for recovery of debts, defendant answers with reference to an entirely different matter, as, e.g., in a suit for recovering 100 gold coins, defendant answers—'I have been beaten by him'. *Avyāpi*, *Incomplete*, i.e., not covering the particulars of the country, place, &c., as, e.g., where it is alleged. 'He has deprived me of my field to the east of Wārānasi in the Central Provinces, defendant answers.' "Yes, I have deprived him of a field." *Nigūḍhārtham*, *Of concealed import*, e.g., in a suit for 100 gold coins, defendant retorts thus 'what! Is it I alone who owe anything to him?' Here by this dubious statement, it is implied that either the Chief Judge, or a Councillor, or the plaintiff is in the position of a debtor to some one else and thus the statement has a concealed import. *Ākūlam*, *Inconsistent*, i.e., Contradictory having regard to the statements made before and after; as in a suit instituted for 100 gold coins, defendant answers, 'yes I did receive the amount, but I do not owe it.' *Vyākhyāgamyam*, *Requiring explanation*, i.e., intelligible by the help of explanations required¹ by reason of the implication or express use of cases and compounds (which are) difficult to split up, or by reason of the use of expressions current in the language of foreign countries. As for example, in a suit for 100 gold coins due under a paternal debt the defendant answers: 'As for the expression *gṛihīta-s'ata* (a hundred

1. This has been given as an instance of the 'Implication or express use of cases and compounds (which are) difficult to split up' (दुःखिट्टविभक्ति-समासाध्यहाराभिधान). Here, the answer of the defendant is capable of a two-fold interpretation—

(1) From the Defendant's side it may be said, 'even supposing the expression *gṛihīta-s'atasya pituh* means that my father had received a hundred coins, I do not see its connection with gold.'

(2) The plaintiff on the other hand, or even, the court might read in the defendant's answer, 'an admission of the receipt of 100 gold coins by the father.'

And lastly, the fact that the answer is capable of an interpretation either way as stated above is in itself an evidence of (a दुःखिट्टसमास) 'a compound difficult to be split up'; another reading is अस्खिट्टस्=irrelevant, faulty.

having been accepted), I do not know its connection with gold coins and my father.' Here, the real meaning (of the defendant's answer) is this: "As for (the expression *grihita-s atasya pituh*) my father having accepted a hundred coins, I am not aware of his having received gold coins" *Asāram*,¹ *Unreasonable*, i.e., opposed to reason. As in a suit alleging 'he borrowed 100 gold coins at interest, but did not the principal,' the answer is 'True, I have paid the interest, but not receive the principal.'

By the use of the word 'answer' in the singular number, a combination of answers is excluded. As says

* Page 8. *Katyāyana*²—"That which admits part of the claim as true, sets up a special plea³ to another part, and makes a denial of a third, is regarded as no answer on account of the mixture (of several pleas)." The same Author⁴ thus explains the reason why such (a statement) is regarded as no answer: "In one suit, the burden of proof cannot lie on two litigants, nor can both obtain judgment, nor can two proofs be adduced simultaneously in one suit." In a combination of the answer by denial and by special exception it is incumbent both on the plaintiff and the defendant to adduce evidence, as has been said: "In the case of a denial,⁵ the proof rests on the plaintiff, while in a special plea, on the defendant." The simultaneous proof by both in one transaction is contradictory. As for instance where the allegation is, "he has taken gold and 100 rupees", and the answer is "gold was not taken, 100 rupees were taken, but were returned." In a combination of the pleas of special exception and former judgment, the defendant alone has to adduce evidence. "In the combined plea of former judgment and special exception, the defendant must exhibit proof." As where the charge is that gold was borrowed and it is met by an answer that it was returned, and also that the plaintiff was defeated by a judicial trial with regard to silver. Here the former judgment should be proved either by (producing) the decree itself, or by the evidence of

1. *Katyāyana* illustrates thus :

काकस्य दन्ता नो सन्ति सन्तीत्यास्ति यदुत्तरम् । असारमिति तत्वेन सम्यङ्गं नोत्तरमिष्यते ।

2. Verse 189.

3. Correspond to the pleading, in English law of "*Confession and avoidance.*"

4. Verse 190.

5. मिथ्या—मिथ्या अप्ययमिदं Bālambhatti P. L. 19.

those who gave (or were present at) the former judgment, while a plea of special exception should be proved by witnesses, documents, &c. Thus there is an opposition between the pleas of *res judicata* and special exception.

The same would be the view in the case of a combination of three pleas in an answer. As, e.g., where it is alleged 'he (the defendant) borrowed a hundred gold coins, a hundred rupees, and also clothes, the defendant answers "True, gold was borrowed, but it was returned; the hundred rupees were not taken at all; and as regards clothes, he has already been defeated in a former judgment." So also in the case of a combination of four pleas.

These mixed pleas constitute vicious answers when set up simultaneously, each particular plea not being P. 8, L. 12. likely to be established without its particular proof; but when taken separately they are good 15 answers. The order is to be determined according to the will of the plaintiff, the defendant, and the councillors.

When, however, there is a combination of two, that plea, which contains the most important point should be taken up for proof first, and the suit should proceed; the minor plea should be taken up afterwards and the trial determined. Where there is a combination of (the plea of) admission and another plea in answer, the suit should be tried by taking up the other plea (for proof); for a plea of admission there being no (necessity of) proof¹.

As Hârita after observing: 'If a denial and a special exception should occur together, and if the plea of admission be made with any other, which of these should be accepted as an answer?' has remarked: "In such a case, that which contains the most important point or which is conducive of proof, is to be considered as an unmixed answer; any other answer becomes otherwise;" 30 i.e. it becomes a mixed answer.

The meaning is that the order in which such mixed pleas are taken up for determination depends on choice by regard to the plea

1. It being impossible to adduce evidence for both the pleas simultaneously.

that survives last. Of these, the plea containing the *important point* occurs, as *e.g.* where in a suit it is alleged that "the defendant borrowed gold, one hundred rupees, and also clothes" and the answer is, "True the gold was taken, but one hundred rupees were not taken, and as for the clothes, they were taken, but were returned." Here the answer by denial being the important plea, the trial should proceed after taking plaintiff's evidence. Then the trial should proceed with reference to the clothes. The same order should be followed in the combinations of denial and previous judgment, or of special plea and previous judgment. Moreover, in the same suit, where the answer is "True, I received the gold and the hundred rupees, (but) I will repay (them); the clothes however, were not received, or having been received, were given back; or that he (the defendant) was defeated formerly in regard to the clothes"; in such a case although the admission is the most important point, there being no necessity of evidence for it, the trial should proceed after taking evidence on the plea of denial &c. Where, however, the denial and special plea cover the whole point, as *e.g.* where the plaintiff identifying his cow by the horns, says "This is my cow, (it) was lost at a particular time, and was seen today in this man's house"; while the defendant says: "This is false, the cow has been in my house even before the time mentioned by him (plaintiff), or it was born in my house." It cannot be said that this is not an answer, as it is competent to meet the point in dispute, nor can it be a simple denial, as a special plea has been introduced. Nor, there being no admission of a portion of the plaintiff's case, is it a special plea. Therefore this is an answer by denial coupled with a special exception. Here defendant has to adduce evidence, on account of the text¹ "the burden is on the defendant, in (the case of) a special exception."

30 It may be asked, under the text²: "In a denial, the evidence should be led by the plaintiff" why does not the burden (in the above case) lie upon the plaintiff?

P. 8. L. 31.

The answer is that the text applies to a pure denial. Then it is asked why should not the text¹ "In a special exception, the burden is on the defendant" be made likewise applicable only to a simple plea of special exception? the

1. कारणे प्रतिवादिनि ।

2. मिथ्या किया पूर्ववादे ।

answer is, "no, this cannot be; every plea of special exception necessarily involves a denial; and therefore a special exception pure and simple can never occur."

As the wellknown plea of special exception contains an admission of a portion of the plaintiff's case, there

5

* P. 9. is a denial of the rest. As e.g. "True, I did receive a hundred rupees, but I do not owe

(the amount) now, as I have repaid it." In this example the particular point to be noted is, that there is no admission of a portion of the plaintiff's case. This moreover has been clearly laid down by Hārīta :—"Of the two answers viz. of denial and special exception, the special exception should be accepted (as an answer)."

10

Where the pleas of denial and previous judgment cover the (whole) point at issue—as e.g. in the allegation, "He owes a hundred rupees to me" the answer is : "This is false; he (the plaintiff) has been defeated formerly on this point"; there also the burden of proof is on the defendant, on account of the text¹, "When *res judicata* and special exception are set up as a combined plea the defendant should exhibit proof." Because, the plea of a former judgment pure and simple can never occur, and (therefore) it might be said that the plea is no answer, likewise, the plea of admission is a good answer (precisely) because, it meets the point at issue by admitting as established the claim which in the plaint was stated as the matter to be established.

15

Where, however, there is a combination of a special plea and previous judgment, as e.g. when charged with having received a hundred, the defendant answers, "True, it was received, but it was returned, and, moreover, he (the plaintiff) has been defeated before on this very cause of action", in such a case, proof will be exhibited (in the order determined) according to the defendant's choice. Then the result is, that a double proof in one suit by the plaintiff and the defendant should not be allowed.

20

25

30

Viramitrodaya.

When the nature of the complaint has thus been reduced to writing by the king, the Author proceeds to state the function of the

35

1. Of Vyāsa,

king in regard to the second part of the judicial proceeding in the form of the answer of the defendant

Yāñjavalkya, Verse 7 (1)

5 *S'ruto*, 'heard i. e. properly comprehended, *arthāh*, 'plaint', *S'rutarthaṁ*, having heard the statement in the plaint in connection with that, *Uttaram*, 'the answer', the act of the Defendant, *purvavedakasya*, 'of the first informant' i. e. of the plaintiff, *sannidhau*, 'in the presence of', by the king should be caused to be written.

10 By the use of the expression *śrutārtha* 'one who has heard the substance of the plaint', in the case of a defective plaint such as 'although separated from me, he should pay me the wealth acquired by him from the acquisitions' and the like form, it should be understood that even without an answer there is success. Thus, after the plaint is written, the Defendant should, in the presence of the plaintiff 15 state his answer; "which should be such as would cover the points in the plaint, concise, unambiguous, not inconsistent, and should not be such as would not be intelligible without an explanation; men versed in law consider that a (true) answer," thus characterised by Nārada.¹ It is thus established that thereafter the king should cause the answer 20 to be written. As in case of the plaint, so the faults of an answer also may be deducted from the *Smṛtis*.

Moreover, for filing the reply, time should be given to the Defendant. That Kātyāyana² has stated thus: "If after hearing the claim in the plaint while it is being³ written, the Defendant asks for time for some reason, that should be given to him (145). Immediately, or one, five or three days according to the magnitude or littleness, should he get; and three fortnights or a week in suits for debts and the like. (146). For recent transactions, (the reply must be made) at once; where a month has passed, a day should be given; 30 where six years have passed, three days; and seven days, where it is of twelve years' duration. (154) For one twenty years old, ten days, or half of a month; a month for one of thirty years, or three fortnights at the utmost (155). After having ascertained the period and the capacity and the importance or triviality of the transaction, the

1. Verses 145-158.

2. This text has also been cited by the *Mitākṣharā*, generally. In the *Aparaka* it is assigned to Nārada, while the *Smṛti Chandrika* cites it as of Prajāpati, see p. 42, L. 30. The printed *Smṛti* of Nārada, however, does not contain this verse.

3. The other reading is श्रुत्वा लेख्यगतं त्वर्थं। The reading in the text is श्रुतालेखयतोऽत्यर्थं।

Authority should grant time to the Defendant. Also what the Author will state hereafter, that is stated to be the additional time. (147)

Vyāsa¹ : “If at that time there occur no fault indicated by the acts of the king or divine agency, by merely giving up time, he does not become defeated. If the fault be due to acts of the king or of God, he shoudt establish (his case) by means of witnesses ; but if he resorts to begging,² he should be punished and should be compelled to pay the amount.”

The plaintiff, however, does not get time for the formulation of the plaint. So says Kātyāyana³: “Since the commencement of the litigation was resolved upon by him after a long deliberation, therefore he must not get time ; one who is proceeded against, should, however get time.”

To this Brhaspati mentions an exception:—“If the plaintiff owing to immaturity, is not able to declare, then time should be given by regard to the transaction and the capacity”. When, however, the defendant without the existence of causes prescribed by the S'astras, does not adduce an answer, then he is (deemed to be) defeated, vide the text⁴ : “One who alters his former statement, one who shuns the judicial proceeding, one who does not put in an appearance, one who makes no reply, and one who after he is summoned runs away ; these are stated to be the five varieties of a faulty (*hīna*) claimant”; as also under the text⁵ : “To the plaint when stated, if one does not give a proper answer, after the lapse of seven nights he becomes defeated, and deserves penalty.”

That answer, moreover, is of four kinds as says Kātyāyana⁶: “Pleading the truth, or the falsehood (of the plaint),: setting up a special plea, or a decision in a former judicial proceeding ; thus, the answer is four-fold”. Vyāsa⁷: “Admitting the truth of the point at issue, is known as *Admission* ; giving a reason, (is known) as a *special plea* ; and declaring it as false (is known) as *denial*”. Brhaspati⁸ : “If a

1. These texts are also attributed to Kātyāyana. See verses 161, 162. There the reading is different, as will be found by a comparison of the two.

2. खेण—The other reading ज्ञेन ‘through crookedness’ is better.

3. Verse 134.

4. Cf. Kātyāyana Verse 202.

5. Cf. Brhaspati IV. 4.

6. Verse 165.

7. Cf. Kātyāyana Verse 168.

8. Cf. Kātyāyana Verse 171.

person, though defeated by the customary procedure, again files a written complaint, the answer to him would be 'you were defeated formerly'; this is called the plea of 'former judgment'.

Here, the first, being in the form of an admission of an established fact which becomes the means of proof, is a good answer. It is not that thus the defendant is restricted¹ because in this investigation about a fact, it is inadmissible as a restrictive factor.

The answer by denial is, moreover, four-fold; so says Vyāsa² " 'This is false'; 'I do not know', 'I was not present at the time',³ and 'I was not born at the time'; thus the answer by denial is of four varieties."

Here by saying 'this is false', 'I do not know', and by making similar defences, there is a denial or concealment of the fact itself; by the answer 'I do not know', by pleading the non-remembering of the essential fact, it is intended to maintain its absolute non-existence; to the allegation in the plaint 'you took this loan in Várānasi,' the answer being, 'I was not in Várānasi,'; to the allegation, 'you obtained twenty-five years ago,' the answer being 'Indeed, I was not born at the time', thus by a series of allegations and refutations indicating the meaning; in an allegation, 'by your father was a hundred of gold taken', the answer that 'I do not know', is an assertion and a refutation, and not an answer 'by denial.'

It should not, however, be supposed that thus there being an absence of an answer (as such), there should be a success for the plaintiff, as all circumventions are necessarily to be disposed of by a judicial trial according to law, and there these are admissible as means of proof by the deponent. Hence it is that in the case of an overt sale (the plea of) non-delivery as a gift by the owner⁴ has also to be weighed. Here, therefore, the non-proof of the fact in issue is the fault in the plaint.

The answer by 'a special plea' is, moreover, three-fold by regard to the cause of action alleged in the plaint, it may be 'more strong', 'equal in strength' or 'less strong'.

There, the first is as, e.g., to the allegation, 'You obtained a hundred from me' the answer is 'yes, but it was paid off.' Here the central point of the absence of proof of non-payment not being pressed,

1. i. e. prevented from proceeding further on.
2. Also Kâtyâyana, Verse 169.
3. i. e. the time of the alleged transaction.
4. नास्ति—The owner of the thing which was supposed to be lost.

non-proof is the fault in the plaint. This is also called a counter-plea, *Pratyavashkandana*, vide this text of Brhaspati: "If a defendant, while admitting plaintiff's written allegations sets up a plea, that is called a confession and avoidance".

The second,² as in a plaint that 'this land is mine as it has come to me in successive generations' the same is the answer. This, moreover, is in reference to a valid plea in defence. 5.

The third as in a plaint that 'this land is mine, as commencing from such a period it has been mortgaged with me by the owner,' the answer is 'commencing from five years ago, that has been mortgaged with me by him in the fifth year'; this also is in reference to a valid plea. From the text³ "In transactions of mortgage, gifts, and sales, the prior is more powerful". Here also, for dispelling fraud, proof, &c., has to be adduced. 10

The answer of a 'former decision' is, however, in this form, viz., 15
"In regard to this cause of action, he has been conquered by me", and the like.

Here Kātyāyana⁴:—"That which admits part of the claim as true, sets up a special plea to another part, and makes a denial of a third, is regarded as no answer on account of the mixture (of pleas)". 20 There, some explain the meaning of the text thus: In a claim for a hundred taken, 'I owe fifty certainly, twentyfive has been paid off, and twenty-five was not taken', and the like is no (proper) answer, and hence also "In one suit, the burden of proof cannot lie on both litigants, nor can both obtain judgment, nor can two proofs be adduced 25 simultaneously in one suit" this text⁵ becomes consistent.

Some say that the aforesated mixed answer is admissible, and that therefore all that holds good. That is not proper. Not that such a subject matter itself is not possible, as it is generally seen; nor that such an answer must not be given, it being impossible to prevent the tendering of an answer based as on facts; nor is it that in such an answer defeat alone will follow. In a dispute the answer which challenges an 30

1. Vijñāneśwara assigns this text to Nārada. See text p. 7. 1. 12 Tr. p. 661. It is not found in the 'Extracts from Brhaspati' published by Dr. Jolly, S. B. E., Vol. XXXIII.

2. i. e. the समचल the second variety of a कारणोत्तर.

3. Yājñavalkya II. 25.

4. Verse 189.

5. Cf. Kātyāyana Verse 190.

oath, and also consists of a denial, that has the illusive appearance on account of the combination. This is the meaning of the sentence. The rest, as also the expression ‘in one part’ repeated twice is a repetition.

Indeed, in such a case what would be the effect of the text ‘In 5 one suit &c.’? The answer is: In one suit in a simultaneous manner, there cannot be (adduced) evidence by both; this and the like is its meaning. Or shortly stated, that text is intended to prohibit evidence by both to be simultaneously adduced. 7 (1).

After the written answer is thus filed, the establishment of 10 the point at issue being dependant on the means of proof, it may be asked who should exhibit the proof? Anticipating this the *Author* says

Yâjñavalkya, Verse 7(2).

Next, the plaintiff should immediately have written 15 down the evidence by means of which the matter in dispute (or alleged) is (proposed) to be established. 7(2).

Mitâksharâ:—*Tatah, next*, after the answer; *arthî*, the *Plaintiff*, one who has to gain a point; *sadyah*, *immediately*, even immediately after; *lekhayet*, *should have written down*. What has 20 been sworn to in the complaint and is to be established is the *Pratijñâtârtha*, *the matter in dispute*. Of that the *sâdhana*, *means of proof*, i.e. that by which the matter is to be established, i.e., the measure (of proof). Here, by saying (the plaintiff) ‘should have immediately written down’, it is implied that some delay is 25 allowed in stating the answer. That, moreover, will be discussed in detail later on.

By saying that ‘the plaintiff should have written down evidence for proving the point at issue’ it is

P. 9 L. 15. meant that the party who has to gain the point
30 should have written down the means of proof of the point at issue. Therefore, in an answer where a previous judgment is pleaded, the previous judgment itself being required to be proved, the defendant himself is regarded as the plaintiff, and so he himself should have his means of proof written down. So also 35 in an answer containing a special plea, the special plea itself being

required to be proved, he who sets up the special plea, himself comes to be (in the position of) the plaintiff, so he should have the proof written. In a denial, however, the original complainant is himself the plaintiff, and he should exhibit the means of his proof.

By saying: "Next the plaintiff should have written down, &c." 5
it is intended to be laid down that the plaintiff

P. 9, L. 19. himself should cause the proof written, and none else. And, hence also, in the case of an answer by admission there being no point at issue, neither the complainant nor the defendant being in the position of a plaintiff, there is no indication of the means of proof, and thus, it follows, that the trial comes to an end at that very stage. This very rule has been clearly stated by Hârita :—" In an answer containing the combined pleas of former judgment and special exception, the defendant should exhibit proof ; while in the plea of denial, the original plaintiff ; (but) in the 19
plea by admission, that proof, i.e., is not necessary at all."

Viramitrodaya

The determination of the result by the king being based on evidence, and the exhibition of that being the duty of the plaintiff, in regard to him, the Author states the third part of the proof 20

Yâjñavalkya, Verse 7 (2)

Tatâh, 'next,' when a proper answer has been made by the defendant, and also caused to be written by the king; *arthi* 'The plaintiff', i. e., the party who has to establish the statement made, respectively either the plaintiff or the Defendant as the case may be; 25 *pratijñâtasya*, 'of the point affirmed,' i. e. of the matter duly stated by oneself, *sâdhanam* 'means of proof' such as witnesses, documents, and the like, himself having set out, should cause to be written through the officers of the king. By the use of the word *sadyah*, 'immediately,' is meant that in the matter of the exhibition of evidence, no delay should be caused. Thus says Kâtyâyana¹: "No loss of time should be caused by the king in the examination of witnesses ; great harm might result from (lapse of) time, in the form of the turning away of justice."

That means of proof, moreover, is twofold, human and divine ; as says Brhaspati² : "Evidence is declared to be twofold, human and 35

1. Verse 339.

2. Ch. V. 17-18.

divine. Each of these is again divided into a number of branches by sages declaring the principles of law. Witnesses, documents, and inference, thus human evidence is declared to be threefold. Commencing with the balance and ending with the Dharma, thus the divine evidence 5 is declared to be nine-fold.”

That evidence, moreover, is the means of proof. This has been elaborated above. Such proof, however, is not necessary in an answer of admission. In regard to other answers, Vyâsa states a rule thus: “In the pleas of *res judicata*, and that of a special plea, the defendant should 10 adduce evidence; in the answer of a denial, the first deponent (the plaintiff); in an admission, one need not prove.” Here, by the use of the word ‘special plea’, is intended to state a stronger reason, as the Author *will state*¹ further on: “If the first claim be invalidated, then those of the next claimant should be examined.” Kâtyâyana²: “If 15 after the plea of admission, a special plea is set up, and if it is stronger, then the case of the defendant must be proved; in the absence of that, the other is deemed to be established³. ” The cause of the debt *viz.* the acceptance of the loan, as alleged before by the plaintiff being admitted i.e. accepted, another stronger reason, such as payment back and the like, 20 if it is set up in the defendant’s statement, then that is to be established, and not the other, by reason of the rule of equal and less force. This is the meaning.

In a plea of denial, however, the burden of proof by this-worldly⁴ evidence is on the plaintiff; while of the divine evidence in the form of 25 an ordeal, oath, or both; on the defendant himself: “No one should compel the complainant into an ordeal; to the one who is complained against should be administered an ordeal by those well-versed in the (rules as to) ordeals.” In this text⁵, in the first half a prohibition against the complainant contained in the first half, that kind (of evidence) is 30 restricted in the latter half to the person proceeded against upon the principle that “when a fact which is established, is opened out,” it involves a restrictive proof. So says the revered Mis’ra. The Sâmpradâyikas, however, hold that here, by the word complaint is meant

1. Yâjñavalkya II. 17.

2. Verse 191.

3. साध्यते तद्विनेतरत्; the other reading is साध्यते तद्वि नेतरत्—is established, and not the other. In the comments on this verse Viramitrodaya appears to accept this reading.

4. i.e. human evidence.

5. Cf. Kâtyâyana Verses 244, 411,

a complaint regarding theft, assault, and the like accusations. In the case of a denial against a claim for a debt etc., they say that even the divine proof is also on the plaintiff. (7)

S'ulapāni

Yājñavalkya, Verse 7.

After the defendant has comprehended the meaning of the plaint, his answer should be caused to be written in the presence of the deponent of the plaint. Kātyāyana¹ mentions the time for the answer: "For transactions of recent occurrence, immediate only is ordained; while for those of duration, the chief authority may give time to the defendant." 5

The characteristics of an answer and its varieties are stated by Nārada²: "Men versed in law consider that an answer, which comprehends (the points raised in) the plaint, is concise, unambiguous, not inconsistent, and is easily intelligible without an explanation." 'Comprehends' i. e. covers. "A denial, an admission, setting up a special plea, also; and a former decision, are the answers stated to be four by those versed in the principles (of law)." "If a defendant give a denial to a claim made, that (answer) is known in law as a denial." As says Brhaspati: "After hearing the plaint, if the defendant admits it, that is called an admission by the scholars of the Śastras. If a defendant, admitting plaintiff's written allegations, sets up a plea, that is called a confession and avoidance. If a person, though defeated by the customary procedure, again files a written complaint, the answer would be, 'you were defeated formerly'; this is called the plea of a former judgment." 15 20 25

After the recording of the answer, one should endeavour to prove it. So says Brhaspati³: "After the first statement and the answer are recorded, and the judicial proceeding has commenced, the two are welded together like two balls of hot iron. Where there is a doubt about the truthfulness of the witnesses for both, and the two are in suspense, then as wise men the two should effect a compromise (while the uncertainty lasts)." 30

In the absence of a compromise, the rule in the text⁴: 'then the plaintiff &c.' prevails. By the word plaintiff, each is indicated in regard to his own side, and is to be so taken. Thereafter, the plaintiff should cause to be recorded the proof of such witnesses, documents &c., which are the means of establishing the point made out in his plaint, and which have the characteristic of truthfulness; and not after an interval of time. (7). 35

1. Verse 153.

2. In the Smṛtichandrikā this text is cited as of Prajāpatī; see P. 42 L. 30.

3. Ch V. 11, 12.

4. Yājñ. II. 7.

What next? So the Author says

Yājñavalkya, Verse 8 (1).

If it (the proof) succeed, he obtains success; if otherwise, the reverse i.e., if it do not permit, he fails. 8 (1).

5 **Mitāksharā** :—*Tasya, of that, i.e., of the means of proof having the characteristics inferable from the several texts to be mentioned further on, about the written documents, witnessess, &c., presently to be described, siddhau, in the case of success, if accomplished, siddhim, success, in the form of accomplishing the point at issue, prāpnōti, obtains; a to, other, than this mode, anyathā, otherwise, the non-establishment of the (means of) proof in any other manner brings on, ápnōti, the reverse, viparītam, i.e., the non-accomplishment of the point at issue which is indicative of a defeat. This is the construction.*

15

Viramitrodaya

The Author states the fourth stage, known as the decision of the point involved

Yājñavalkya, Verse 8 (1)

20 *Tasya, 'of that', i.e. of the point laid out by evidence such as the witnesses or other means, siddhau, 'if established', i.e. if borne out, siddhim, 'success,' i.e. victory; anyathā, 'otherwise' i.e. if not proved, viparītam, 'reverse', i.e. non-success, ápnōti, 'he gets'. This is the meaning. According¹ to the Mitāksharā, viparītam, 'reverse' means bhangam, 'broken'; that is doubtful. 8(1)*

25

The Author having thus described the nature of a judicial trial now concludes

Yājñavalkya, Verse 8 (2).

This legal procedure is declared to be of four-fold character in litigation. 8 (2).

1. But no such position appears to have been taken by the Mitāksharā.

Mitâksharâ :—The legal procedure, Vyawahâra, referred to in the text¹, viz. “A king should hold trials, &c., has thus been upadarsitah, described, to be of four-fold character, i.e., by imagining it to consist of four parts in litigation ; i.e., in the chapters on payment of debts, &c., as consisting of four parts and being of four kinds. Of these the first part is called the part relating to the plaint and begins with the text²: “In the presence of the defendant (the plaintiff) should be written, &c.” The second part is the part relating to the answer and is introduced by the text³: “the answer of one (i.e., of the defendant) who has heard the plaint should be taken down in writing.” The third part relates to evidence and proof and begins with the text⁴: “Next the plaintiff should cause to be written, &c.” The fourth part contains the decision regarding the proof of the point at issue and is in the text⁵: “If it (the proof) succeeds, he obtains success.”

As is said “When disputes regarding their interests arise between men, their settlement according to rules

* Page 10. laid down in texts is called a Vyawahâra or a judicial trial. The four divisions of it, viz., the

plaint, the answer, the proof, and the decision⁶ are laid down in their proper order ; hence it is called four-fold”. In an answer by admission, however, the proof is not exhibited, and thus the point at issue is not (necessary to be) established (at all), and so it has not the part which contains the means of proof. So it has two parts only. After the answer is recorded, the decision⁶ of the councillors

1. Yâjñ. II. 1. p. 632 l. 12. 2. Yâjñ. II. 6. see p. 651. l. 11–15 above.

3. Yâjñ. II. see p. 661. l. 17 above. 4. Yâjñ. II. 7. p. 672 l. 13 above.

5. Yâjñ. II. 8. see p. 676. l. 4 above.

6. परामर्शः—व्याप्त्यस्य पक्षवृत्तिव्यधीः परामर्श उच्यते. e. g. वन्हिव्याप्त्यधूमस्य वन्हिव्याप्त्यधूम-पर्वतवृत्तिव्यधीः परामर्शः—धूमो वन्हिव्याप्त्यः पर्वतवृत्तिश्च इति ज्ञानं परामर्शः Here the परामर्श would be the mental process deciding the onus by sifting the statements in the pleadings with the view of discovering

(1) how far these statements are relevant to the issue पक्षवृत्तिव्य.

(2) „ „ „ „ have a reference to the relief claimed साध्यव्याप्त्यत्वं,

The opponent says that परामर्श characterized as above has been recognized as a distinct stage in reasoning, how is that Yâjñavalkya does not make it a

by ascertaining on whom, between the plaintiff and defendant, the (onus of) proof should lie has not been mentioned by the Lord of Yogis (Yājñavalkya) as a (distinct) part (stage) in a judicial proceeding, and as it (the decision as to the onus) has no reference to the parties, it has not been mentioned here as a (distinct) part in a judicial proceeding. This is as it should be.

Here ends the Chapter on General Rules of procedure.

Viramitrodaya

The Author rounds up the body of *Vyawahāra* detailed before

10 Yājñavalkya, Verse 8 (2).

Vivādeshu, 'in disputes', such as the recovery of debt and the like, which are the subject matter for consideration, *ayam*, 'this', of this, character, containing the plaint etc. and therefore, *chatushpāt*, 'four-footed' i.e. having four parts, the meaning of the word *Vyawahāra*, has (thus) been pointed out i.e. illustrated. The illustration is of any *vyawahāra*. Thereby, "In the case of a denial, it is four-footed, as also in the plea of confession and avoidance, and in the plea of *res judicata*; in the pleas of admission it should be known to be two-fold", thus in this text of Brhaspati¹, that a two-footed *vyawahāra* has been mentioned, does not matter much.

20 'In admissions' i.e., this rule should be so observed also in a plaint to which an answer is not possible. Although even in an (answer by) admission, including the decision, there are three parts, still there, for the declaration of a decision there being no necessity for a separate step, the statement that it is two-footed is proper. On account, however, of a statement as to the ignorance of circumstances on which an answer may be founded, it having receded from the position of an answer, including also this, it can be regarded as having four parts. 8 (2).

Here ends the Chapter on General Rules of Procedure.

S'ulapāni.

Yājñavalkya, Verse 8.

Upon the evidence adduced being decided to be true, *siddhim*, 'accomplishment' i.e. success, *prāpnoti*, 'he obtains.' In the case other distinct *Pāda* (section or chapter). The author replies in the text उत्तरामिधानानंतरं &c. This is the प्रत्याकलितपाद्. See Smṛtichandrikā pp. 50-54 and note on p. further on. पौनःपुन्येन विचारणं प्रत्याकलितं-सुवेदीधिनी गृ. ६ पं. २०

1. Oh. III. 3 ; see also Kātyāyana, Verse 245.

than this, *viparitam*, 'reverse' i.e., a defeat; this is the meaning. So also Nārada¹: "The essential part of proceedings at law is declared to be the plaint; if that is lost, the plaintiff loses; if he can substantiate it, then he succeeds." *Uttaro*, 'succeeds' i. e. gains it. By the text:² 'in the presence of the defendant &c.'. A *vyawahāra* or a judicial proceeding has been stated to consist of four parts, viz., the plaint, the answer, the evidence, and the success or defeat in the form of the decision. So also Brhaspati:³ "The plaint is called the (first) part; the answer is declared to be the second; similarly, the evidence and trial, another; and the decision is declared to be the fourth. In the case of the denial it consists of four parts; likewise, in the case of the plea of confession and avoidance; the same rule applies to the plea of *res judicata*; but it has only two parts in pleas of admission." Although even on a plea of admission a decision has to be given, still no evidence is to be led or a trial held, and therefore it is said to be of two parts. Including the added one, it is of four parts, so says Kātyāyana⁴: "The plaint, the answer, the deliberation of the judges, and the part called the trial; by which is declared to be of four parts." The *pratyākalita*⁵ part, the Author will state hereafter. (8).

Chapter II. Special Rules of Procedure.

Having so far laid down the rules of procedure applicable to all kinds of suits, and wishing to point out some peculiarities (of procedure) in some special suits, the Author proceeds

Yājñavalkya, Verse 9 (1).

Until the complaint is disposed of, no counterclaim should be allowed against him (i. e. the complainant). 25

Mitāksharā :—(That) with reference to which an accusation is made is an *abhiyoga*—complaint, regarding Counterclaim. an offence. Until the complaint is disposed of, *anistirya*, i.e. removed, enam, him. i. e. the 30

1. Ch. I. 6. 2. Yājñ. II. 6. p. 651 above. 3. Ch. III. 2, 3. 4. Verse 31.

5. *Pratyākalita*—the deliberation of the judges regarding the burden of proof. Note the following observation in Aparārka (p. 61. lines. 10–12). अत्र च सिद्धशब्देन सम्यानामर्थं प्रत्यर्थिं विषयजयपराजयावधारणे पायभूतं प्रमाणमस्येदं शास्त्रतः प्राप्नोति विचारकाणां परामर्शः प्रत्याकलितादिशब्दवाच्य उच्यते, सिद्धिकलत्वात्। and this text of Kātyāyana is cited thereafter. So also Mitāksharā—उत्तराभिधानानन्तरं सम्यानामर्थं प्रत्यर्थिनोः कस्य क्रिया स्यादिति परामर्शलक्षणस्य प्रत्याकलितस्य (पृ. १०. पं ३—४),

See also subodhini औन्तःपुन्येन विचारणं प्रत्याकलितम्। (पृ. ६ पं. २०).

complainant should not be allowed to be charged with an offence, na pratyabhiyojayet, no counterclaim should be allowed.

5 Although a 'special plea' has the appearance of a counter-claim, still inasmuch as it is intended for removing a charge against oneself, it does not come under the present exception. Hence, this prohibition is against that form of counter-charge which is not intended as an answer to a charge against oneself. This has been laid down as having reference to the Defendant.

The Author now states the rule as regards the plaintiff

10 Yâjñavalkya, Verse 9 (2).

Nor should any other person be allowed to file a complaint against one who is already under a charge, nor what has already been alleged should be allowed to be changed.

15 Mitâksharâ :—Abhiyuktam cha nânyeneti, nor should any other person be allowed to file a complaint against one who is already under a charge &c. As against one who has (already) been charged by another, and who has not got over the charge, another complaint should not be allowed to proceed; moreover, uktam, 20 alleged, what was deposed at the time of the first complaint, that viprakṛtim, change, (if) containing a contradiction, na nayet, should not lead, should not be allowed. The purport is this: Whichever fact has been deposed to in whatever form at the time of the first complaint, that fact should be taken down in the same manner at the 25 time of the formal complaint, and not otherwise.

It may be asked: It has already been laid down in the text¹. viz. "Whatever is alleged by the plaintiff should be reduced to writing in the presence of the defendant," why then has it again been repeated in the text² "nor should what has already been alleged be allowed to be changed?" The answer is: By the text "whatever is alleged by the plaintiff" is meant that those facts which have been deposed to at the time of the first complaint, (the same) should be caused to be written down in the same manner at the time of the *Bhâshâ* or

1. Of Yâjñavalkya II. 6.

2. Yâjñavalkya Verse 9 (2) above.

(formal) plaint; as it has been said that “a change in the subject-matter ought not to be allowed even though it be made in the same suit”; as *e. g.* having alleged at the time of the first complaint that ‘he (the defendant) borrowed a hundred *rupees* at interest’, it should not be (allowed to be) stated at the time of the formal plaint or *Bhâshâ* in the presence of the defendant that ‘a hundred *clothes* were borrowed at interest.’ In that case, even if there be no change in the suit itself, there being a change in the subject-matter, he (the plaintiff) would be amenable to a penalty as a *hîna-wâdi*—one guilty of prevarication. 5

By the text : “nor what has been alleged should be allowed to be changed,” a prohibition against a change into another suit is laid down even in cases where the subject-matter remains the same. As *e. g.* having said at the time of the first complaint that ‘having taken a hundred rupees at interest, he (the defendant) does not repay (the amount), he says at the time of the second or formal complaint (*Bhâshâ*) that ‘he deprived me of a hundred rupees by force.’ 10 15

There¹, a change to another subject-matter is prohibited, while here², a change in the nature of the suit is prohibited, and thus there is no fault of repetition. Nârada³ has made this very thing clear : “He who abandons his first allegations, and resorts to a new one, should be regarded as a prevaricator on account of the change in the suit⁴. ” 20

A prevaricating litigant becomes amenable to punishment, but he does not lose his suit. Thus this direction

* Page 11. given in the present verse, *viz.* “until the complaint is disposed of &c.” is intended to avoid mistakes on the part of the plaintiff and the defendant, and has no reference to the proving or not proving of the point in dispute. Hence the Author says further on⁵: “After discarding all circumvention, the king should decide disputes according to the actual facts.” 30

1. *i.e.*, in the text प्रत्यर्थितोऽप्रतीतोः &c.

2. „ „ नोक्तं विप्रकृतिं नयेत् ।

3. II. 24.

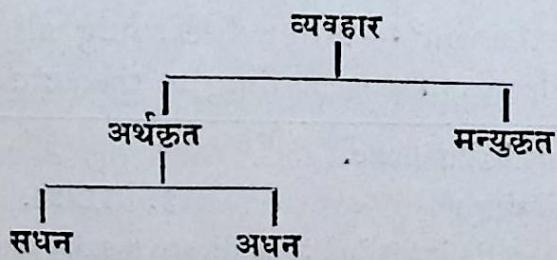
4. पद (*Pada*) as used here is intended to indicate a suit, the statement of the cause of action; while वस्तु (*Vastu*) indicates the subject-matter of the suit, or the point involved.

5. Yâjñ. 11, 19.

This (limitation of the rule), however, should be observed in suits relating to property¹ or title. In disputes arising out of acts resulting from violence, plaintiff loses (also) his suit if he makes a false statement. As says Nârada “A verbal trickery does not vitiate all actions relating to property ; for in suits relating to cattle³, women, land, immoveables and the recovery of debts, the claim is not dismissed even though the claimant is liable to a penalty.” This is explained (thus): *In all suits relating to property*, not in those originating in anger or passion, *a verbal trickery*, even if it be through mistake, *does not annul*, does not get defeated *i. e.* he does not lose his case; his case that is pending. An example here is ‘cattle, women &c.’ *i. e.* as in suits relating to cattle, women, recovery of debts, by an erroneous declaration a plaintiff does not lose his case, though he is (otherwise) liable to penalty, so (is the case) in all suits relating to property.

From the specification of ‘suits relating to property,’ it appears that in suits arising out of acts of violence, the party loses also the claim that is pending, in the case of an erroneous statement. As *e.g.* having stated at the first complaint that “I was struck on the head by him with his foot”, if he says at the time of the formal complaint or *Bhâshâ* that “I was struck (either) by the hand or by the foot”, he, not only is amenable to punishment, but his complaint is also dismissed. 9 (2).

1. Note the following divisions of व्यवहार.



2. Ch. II. 25. Dr Jolly reads सर्वेष्विं for सर्वेष्वर्थ.
3. पश्चिमी is a better reading; परस्त्री another woman,

To the rule—"until the complaint is disposed of, no counter-claim should be allowed against him" the Author mentions an exception

Yâjñavalkya, Verse 10. (1)

A countercharge may be allowed in cases of delicts¹ 5 and felonious crimes.

Mitâksharâ :—Kalahe, *in delicts*, in cases of defamation and assault, sâhaseshu, *in felonious crimes*, in cases of destruction of life by means of poison, weapons &c. (In such cases) when there is a countercharge, it should be allowed against the complainant even 10 while his own complaint is undisposed of.

It may be urged that even in such a case, the countercharge would not be a proper answer inasmuch as it does not meet the case of the plaintiff, and thus (in fact) there being another *pratijña* or complaint, it is equally impossible to go into a simultaneous proof (of both the charges). To this the answer is : True ; but here a countercharge is not allowed with a view to a simultaneous proof, but for an abatement of the punishment, or for avoiding or preventing an excess of it ; for, where the complaint is, 'I was beaten or abused by him,' and the countercharge is 'I was first beaten or abused by him,' there would be a light punishment. As says Nârada²: "He who is the first to inflict an injury is assuredly guilty ; he who retaliates is likewise guilty ; but for the first, the punishment is heavier." Where, however, the assault etc. is commenced simultaneously for both, an enhanced punishment is avoided. Vide the text³: "When both parties simultaneously commence abusing or beating each other, and a difference (in degree) cannot be found, the punishment for both would be the same."
20
25

Thus, even if proof of simultaneousness is impossible, still in cases of abuse &c. a counter-charge has a value ; in suits for the recovery of debts &c., however, it is simply useless.
30

1. कलह—violence; दंडाद्विनेतरतराडनम्, दंड्यादंज्ञादि ; *Medhâtithi*.

2. Ch. XV. 9.

3. Of Nârada Ch. XV. 8. Dr. Jolly's text reads the first quarter as पारुष्यदोषावृतयोः;

Viramitrodaya.

The Author mentions the function of the plaintiff in the interval

Yājñavalkya, Verses 9, 10 (1).

Abhiyogam, ‘complaint’, the accusation made by the complainant, 5 *anistiryā*, ‘without removing’, i.e., is disposed of by the decision resulting in success or defeat, against the complainant, the respondent, *na pratyabhiyojayet*, ‘should not be allowed to counterclaim’, i.e., should not be charged for a counter offence committed by him. Anyena, ‘by another’, while the accusation first made is not removed, 10 until its removal, the defendant should not be allowed to be charged. The substance of the complaint laid should not be allowed to be ‘changed’, *viprakṛtam*, distorted, i.e., the plaintiff or the defendant should not be allowed to write otherwise.

As regards the clause ‘no counter-claim should be allowed 15 against him’, in a mutual fight, in abuse, and in cases of serious offences such as the abduction of women, homicide, and the like, and by the use of the word *cha*, ‘and’, in cases of assaults and thefts, one may file a counter-complaint. In an accusation such as ‘I was abused by him’, ‘I was beaten by him’, one may state as by way 20 of an answer ‘I was also abused’, ‘I was also beaten’. By the use of the first *cha*, ‘and’, are included the grown up and the like. 9, 10 (1).

S'ulapāṇī

Yājñavalkya, Verse 9.

One against whom an accusation has been made, without giving an 25 answer, should not be allowed to charge the maker of the first complaint with a counter-complaint, simultaneously more than one trial being impossible.

The complainant also must not file another complaint against the respondent, as on account of the abandonment of the first complaint, 30 there may be the danger of detriment to the sworn statement. The allegation which has once been made should not be allowed to be distorted by an allegation of a different kind, as there would be the fault a of variation in the pleading. (9).

After laying down the rules for the plaintiff and the 35 defendant, the Author mentions the functions of the Presiding Officer (of the Court) and his Councillors

Yâjñavalkya, Verse 10 (2).

From both a security should be taken, (such as one) who would be competent to satisfy the object of the judgment.

Mitâksharâ :—Ubhayoh, *from both*, i. e. from the plaintiff and the defendant. (That which) in all suits (is) the object of the judgment or decree is kâryanirnaya, *the object of the judgment*. The word *kârya* has been placed first under the rule¹ ‘Ahitâgnyâdîshu.’ The object of the judgment, moreover, is the payment of the amount decreed, and the payment of the fine. For that, samarthah, *competent*, pratibhû, *surety*; he who becomes a substitute for him, *i.e.* in that cause, becomes like him, is a *Pratibhû*; (such a one) should be taken by the Officer presiding the Court consisting of Councillors. 10

If such a one is not possible, men should be commissioned to watch the plaintiff and the defendant, and the daily wages of these (guards) should be ordered to be paid by those (plaintiff and defendant). As says Kâtyâyana²: ‘If, however, the plaintiff has no surety competent for the cause, he should be (kept) under a watch; and (he) should pay the wages to the servant at the end of the day.’ 15

Viramitrodaya. 20

After having stated the duties of the plaintiff and the defendant, the Author mentions the function of the head of the Court along with the Councillors

Yâjñavalkya, Verse 10 (2).

Of the plaintiff and defendant who had appeared for (getting) justice, for entering upon the trial, a security should be taken, as even regarding the plaintiff, there being the possibility of his running away through fear of penalty. Of what kind? Samarthah, ‘competent’ or able to meet the purpose of the decision, *i.e.*, for the payment of the amount established, as also of the penalty. After the manner of the rule¹ 25 *Ahitagni*, &c., the word *kârya*, has been placed first. 30

1. Pânini II. 2-37. वाहिनान्यादिषु. In the compounds आहिनामि and the like the Niśhthâ formed words may optionally be placed first *i.e.* आहिनामि, जातपुत्र etc.

2. Verse, 117.

Or for the object, i.e., for the decision to be given, a security should be taken. It may not be said, having regard to the order¹ of its statement, that the security to be taken is after the decision of the suit, therefore it has been stated that he should be one competent to satisfy the judgment. Or, for the object, which is the subject matter of the suit, such as the recovery of debt &c., for its decision, a security should be taken, (as) if the plaintiff runs away a decision would be impossible. For the absence of the security, however, Kātyāyana²: “If, however, there be no surety given by the plaintiff who has a cause for dispute, he should be kept under watch, and so guarded he should give wages to the guard at the end of the day”. ‘Guard’, i.e., the messenger of the king. 10 (2).

S'ulapāṇi.

Yājñavalkya, Verse 10.

The Author mentions an exception; *kalahe*, ‘delicts’ e.g. slander, as also in charges of assault with weapons &c., ‘I too was attacked with a weapon by him’, such a counter-charge may (be allowed to) be made. In a complaint that ‘the attack was made on me when I was quite innocent’, in a counter complaint in the counter-charge, the fault of simultaneity by numerous complaints does not occur.

A surety should be taken who would be competent to keep the complainant and the respondent under restraint, until the decision of the proceeding. In the absence of a surety, he might change, so says Kātyāyana³. “If, however, there be no surety given by the plaintiff who has a cause for dispute, he should be kept under watch, and so guarded he should give wages to the guard at the end of the day.” ‘Guard’, the royal watchman. (10).

It has been said that a surety should be taken by the presiding officer of the Court consisting of Councillors from the plaintiff and the defendant, who would be able to satisfy the object of the judgment; it may be asked what is that object of the judgment? Anticipating this, the author says

* Page . Yājñavalkya, Verse 11.

When, upon a denial (by the defendant), a claim is proved, he (the defendant) should pay the amount claimed

1. पाठकमेण i.e. since the rule regarding the taking of a security comes to be mentioned after the decision, following the order of its statement.

2. Verse 117.

(to the plaintiff) and also an equal amount to the king. One setting up a false claim should pay double the amount claimed.

Mitâksharâ :—Of the claim alleged by the plaintiff if upon a denial by the defendant the claim is *proved*, *bhâvitah*, by the plaintiff by means of witnesses &c. and thus brought home to the defendant, then the defendant should, *give the amount*, *dadyâd dhanam*, in dispute to the plaintiff and also *an equal amount to the king*, *Râjñe cha tatsamam*, as a fine for *the denial*. If, however the plaintiff is unable to establish (his case), then he himself becomes *mîthyâbhîyogi*, a *false claimant*, and as such should *give to the king*, *dadyâdrâjñê*, *double*, *dwigunam*, the *amount of the plaint abhiyogât*, i. e. the amount claimed in the plaint.

In the case of the plea of '*res judicata*' and of 'confession and avoidance' this same rule should be applied. There, too, when the plaintiff is shown by the defendant to have set up a (false) denial, he should give to the king a fine equal to the amount in dispute. If, however, the defendant is unable to establish either the plea of *res judicata* or of the special plea then he himself should give double the amount to the king as for having set up a false plea, while to the plaintiff the amount claimed or in dispute. In an answer of admission, however, there is no fine.

This, however, has a reference only to the suits for recovering debts. It is not of universal application, inasmuch as special fines have been mentioned in (all) other (kinds of) suits, in their respective places, and also as it cannot possibly occur in suits where the subject-matter is other than money.

And although the rule¹ that 'a debtor should be made to pay by the king &c.,' has a reference to or applies in suits relating to the recovery of debts, we will particularize it there² only.

The same rule should even be used as having a reference to all (kinds of) suits. How? If upon the defendant's setting up a denial

1. Verse 117.

2. See Verse 42 further on.

of the claim it is proved by means of witnesses &c. by the plaintiff as against the defendant, then *equal to it*, *tatsamam*, i.e., to the very amount specified respectively in each (kind of) suit. The word *cha* is used to restrict the¹ extent (of the fine). ‘The amount should 5 be paid to the king’ is the (construction based on) repetition.

If the complainant is not able to bear out this complaint, then the rule laid down is that a double amount of that mentioned in each suit should respectively be paid by him as a fine for (being) a false complainant. Here also in the plea of *res judicata* and of a 10 ‘special plea’ the rule should be applied similarly as before.

Viramitrodaya

The Author mentions the procedure in regard to a defeated defendant or plaintiff

Yājñavalkya, Verse 11.

15 *Ninhave*, ‘upon a denial,’ of a true claim by a false statement *bhāvite*, ‘when proved’ by witnesses also the matter being brought home the defendant should give to the plaintiff the amount which is the subject-matter of the suit. *Rajñe cha tatsamam dhanam dadyāt*, ‘to the king also he should pay an amount equal to it’ in the form of a penalty. A 20 plaintiff, setting up a false claim, should pay to the king an amount double that in dispute. By the use of the word *cha*, ‘and,’ the Author adds another penalty in cases of slander &c. Here Manu²: “Upon a denial of the claim, if it is established by evidence, he should be ordered to pay the debt to the creditor and a small fine according to capacity (52). 25 He, to the extent to which he denies the claim, or to the extent to which he speaks falsely; those two adepts in illegality should be punished with a fine double of that” (60). Here, moreover, the determination of the punishment of those who deny the claim, in equal or

1. Words have the force of प्रवृत्ति or व्यावृत्ति i.e. of having a wider surface covered by the connotations than is indicated by the denotations. In this connection the distinction between नियम and परिसंख्या may be compared. In ‘पञ्चपञ्च नखा भक्षयः’ all animals other than the पञ्चनख are excluded (व्यावृत्ति;) while in ‘समे देशे यजेत्’ it is not so much the exclusion (व्यावृत्ति) of विषमदेश, although that may be the ultimate result, as the selection of a समदेश (प्रवृत्ति) that is aimed at. So Vijñaneśwara says that by the use of the word *cha*, Yājñavalkya means to lay down that an amount equal in amount to that in dispute, and not more or less, should be levied as the king’s fine.

2. Ch. VIII verses 52 and 60.

double the amount should be made by a consideration of the caste, age and wealth, of these. As the Author has said¹: "After taking into consideration, the country &c." (II).

S'ulapāṇi

Yājñavalkya, Verse 11.

5

In a plaint regarding the payment of money, one who has filed an answer of denial, when the claim has been established against him by means of witnesses and the like, the debtor should pay the amount to the creditor. To the king also he should pay an equal amount as penalty. In the case of a denial and an admission, Vyāsa has mentioned half as penalty: "After denial, when the plaintiff voluntarily admits the claim, that should be known as an admission; for that a half penalty has been declared". Other penalties in particular cases, should be ascertained from other Smṛtis by regard to the existence or non-existence of the element of intention as an ingredient in the offence.

10

15

One who offers a false complaint should pay double the amount of the complaint to the king. In regard to the Śudra, Nārada states a special rule: "Those of the Śudra order who file a false complaint against the twice-born, the king should cut out their tongue and impale them upon a cross." (11)

20

By the text: 'Next, the plaintiff should immediately have written down the evidence by means of which the matter in dispute is to be established,' it has been shown that (some) time should be allowed at the stage of filing the answer; the Author mentions an exception to this

25

Yājñavalkya,¹ Verse 12.

In charges regarding felonies, theft, assault, and cow-killing, and in complaints about risk to life and property, and in complaints against defamatory imputations, as also in cases concerning women, the parties must even immediately be asked to plead. In other suits time has been allowed under the discretion (of the court).

30

Mitākṣharā:—Sāhasam, a felonious crime, by means of poison, weapons, and the like, the killing of animals and doing like

1. Compare this with Nārada I. 45.

2. Āchārādhya Yāya Verse 368.

other acts; stéyam, *theft*, stealing; pârushyam, *assault*, verbal abuse and bodily assault, to be defined further on. Gauh, *cow*, i. e. a milch-cow. Abhisápah, *defamatory imputation*, imputations about the commission of a sin. Atyayah, *risk of life and property*, danger to life and wealth; regarding it. The singular is used as the *Dwandwa* (द्वन्द्व) compound is indicative as if it were a single object¹.

5 Striyâm, *concerning women*, high-born women, as well as slave girls. In the case of high-born women, in disputes regarding good conduct or character, in the case of slave-girls, in disputes regarding the right of ownership. Vivâdayet, *be asked to plead*, be made to file an answer. Sadya eva, *even immediately*, no time should be allowed to intervene. Anyatra, *in other suits*, kâlah, *time*, time for filing an answer, ichchhayâ, *under the discretion*, i.e. of plaintiff, defendant, Councillors and the officer presiding, or the chief officer, 10 15 smrtah, *allowed*, i. e. has been laid down.

Viramitrodaya.

It has been stated that 'of the plaint which has been heard (by the defendant) an answer should be caused to be written'; there by regard to the difference in the subject matter, the Author states the 20 awaiting or not awaiting of time

Yâjñavaalkya, Verse 12.

In complaints about crimes &c., the defendant should be asked to state his defence immediately, i. e., should be made to do everything which is useful for reaching a decision such as the filing of an answer 25 and the like. Anyatra, 'in other suits', such as the recovery of debts &c., ichchhayâ, 'under the discretion' i. e. with a desire to find out the truth, an interval i. e. time has been stated in the *Smrtis*. So Kâtyâyana²: "Where the thing is likely to be reduced to deterioration, or destruction, or a loss might occur, there time should not be given; such a matter 30 should be proceeded with as urgent." And Nârada³ also: "In suits relating to debts or the like other subjects, time may be given with a view to ascertain the truth."

Sahasâ, 'with force', i. e. offensively in the presence of people, what is done, such as an attack upon another and the like is called

1. 'सर्वोऽपि द्वन्द्वे विभावैकवद्वति' "All *Dwandwa* compounds are used optionally as indicative of a single object.—परिभाषेन्दुशेखर:

The singular is used, as the द्वन्द्व compound is indicative as if it were a single object. 2. Verse 149. 3. Ch. I. 44.

Sâhasa, 'a felony'; steya, 'theft,' i.e. stealing; pârushyam, 'assault' i.e. a verbal assault, as well as a bodily assault; go, 'cow' i.e. a milch cow; abhiśâpah, 'accusation'; atyaye, 'danger' i.e. the possibility of the death of either the plaintiff or the defendant. This is the locative absolute. Anyatra, 'elsewhere,' i.e. in other disputes. Striyam, 'concerning women,' regarding the character of a high-born lady. (12). 5

S'ûlapâni

Yâjñavalkya, Verse 12.

Sâhasa, 'heinous offence,' i.e. man-slaughter, gau, 'cow,' here, a milch cow; abhiyoge, 'accusation' for a heinous crime; by means of that; atyaye, 'loss,' i.e. destruction of property; striyam, 'regarding a woman' i.e. a high born lady in a dispute about character; in the case of a dâsi, a minor dispute; in the case of these proceedings he should be asked to file an answer immediately. (12) 10

Yâjñavalkya, Verses 13, 14 and 15. 15

He who shifts from one place to another place, licks his lips, whose forehead perspires, as also he whose countenance changes colour; (13) who has a stammering and incoherent speech, and talks inconsistently and too much, who does not respond to the speech or gaze of others, and who moreover bites his lips; (14) who exhibits by his own movements a perturbation in mind, speech, body and action, is known as defective and unfit to be a complainant or a witness (15). 20

Mitâksharâ:—Mano-wâkkâya karmabhîryo swabhâ- 25

vâdeva, *who in mind, speech, body and action*

* PAGE 13. *exhibits by his own movements, not by reason of fear, &c., vikrtim, perturbation, change (for the worse),*

yâti,¹ goes; such a one is known as unfit to be a complainant or a witness, abhiyoge sâkshye wâ duṣṭah parikirtitah. The Author points out the deformity in detail. Desâddesântaram yâti, *shifts from one place to another place, does not stand steady anywhere. Srikkinî, lips, the corners or the edges of the lips, pariledhi,* 30

1. Appears to be a reading that may have been before Vijnâes'wara. The reading in the original text of Yâjñavalkya is गच्छत्.

licks, touches by the end of the tongue or rubs,—an instance of a deformity in action.

Asya lalātam swidyate, whose forehead perspires, becomes smeared with drops of perspiration. Mukham cha Vaiwaryam, countenance also has a changed colour, a changed colour i.e. palour or shadiness; eti, assumes,¹ are instances of bodily perturbation. Parisuṣhyatskhaladwākyā, who has a stammering and incoherent speech; parisuṣhyat, stammering with a stutter; skhalat, incoherent. He whose speech is of such a sort. A man of this description. Viruddham, inconsistent, the last contradicting the first; bahu bhāshate, talks much; is an instance of perturbation in speech. To the words, wācham, of another, he does not attend by giving a reply; nor does he attend to the gaze, chakshuh, of another by a responsive look—a sign of mental deformity. Tathā Oṣṭhau nirbhujati, moreover bites his lips, i.e. twitches—is also an instance of a bodily change.

This, however, has been mentioned to indicate a probable existence of a defect; not as a positive mark of the (existence of) defects as it is difficult to appreciate the distinction between a natural defect and a defect caused by a special circumstance. And even if perhaps a skilful person draws a distinction, still that (by itself) will not be a sufficient cause for a dismissal of (the suit). No one would set about actually performing the exequial rites by merely observing (the) signs (of impending death) in a dying man. Similarly, even if it be known from the signs that the party would be defeated, still, that (by itself) is not sufficient to bring about (an actual) defeat.

Viramitrodaya.

The evidence to be adduced by the plaintiff has been stated before. Now, what cannot be adduced by him, and which is to be inferred by the Chief Judge, the Councillors and the rest, viz. inferential evidence otherwise called the *pratyākalita*, the Author points out

Yājñavalkya, Verses 13, 14, 15.

Mano-vāk-kāya-karmabhir yaḥ swabhāvād, 'who in mind, speech, body and action exhibits by his own movements (manners) i.e. without

¹, Lit: goes or reaches.

any other cause possibly due to disturbance etc., *vikṛtim* ‘a change,’ ‘a perturbation,’ i.e. *yāti* ‘goes’, i.e. reaches; *sa*, ‘he’; *abhiyoge*, ‘in a complaint’ i.e. in a dispute, *sākṣye*, i.e. ‘testimony’ i.e. in a proceeding as a witness; *dushtāḥ parikīrtitāḥ* ‘known as defective and unfit’, in the *Sāstra*. Therefore a complaint made by him or a testimony given by him is not taken as proof. This is the meaning. 5

The Author mentions the perturbation itself: *Deśat*, ‘from a place’ i.e. from the place of his own residence, *deśāntaram* ‘to another place’; *yāti*, ‘goes’, in other words, in regard to his residence does not anywhere exhibit stability; *śikhinī*, ‘lips’ i.e. border of his lips, by a repetition i.e. often and often with the tip of his tongue; *ledhi*, ‘licks’, i.e. rubs. *Asya*, ‘of him,’ i.e., of this defective person, *lalāṭam*, ‘forehead,’ *swidyate*, ‘perspires,’ is saturated with perspiration. *Mukham cha*, ‘mouth also’; *vaivarnyam*, ‘changed into non-colour,’ i.e., palour, *eti*, ‘attains’ i.e. reaches. *Pariśuṣhyat*, ‘dry’ i.e. the mouth becoming dry, *skhalat*, ‘stammering’ i.e. incoherent; one who has this, is that. Thus it is a *Karmadhāraya*, ‘compound.’ *Viruddham*, ‘inconsistent,’ i.e. the prior and the succeeding portions mutually contradictory; *bahu*, ‘much,’ much more than is useful, *bhāshate*, ‘speaks,’ i.e. utters. *Wāk*, ‘speech,’ to oneself, words addressed by another; *chakṣuh*, ‘eyes’ of another bent towards one’s gaze. This is a *dwandwa compound* indicating as if it were a single object; *No pūjayati*, ‘does not respond,’ i.e. does not meet by a return speech or by a response in gaze. *Oṣṭhan*, ‘lips,’ *nirbhujate*, ‘bites,’ i.e. distorts. Of these perturbations the mental &c. may be inferred according to the local conditions of each. By the use of the words, *cha*, ‘and,’ *api*, ‘even,’ *tathā*, ‘and also’ is intended to indicate that “Although asked by many to speak, does not speak, and does not prove what he has stated; or who does not know what is the first point, and the point next following; such a one fails in the suit. (57). Having declared ‘I have witnesses who know,’ when asked to point out, who does not point out; the officer of the law-court, on (account of) these grounds, may declare him also to be non-suited.” (58). These and others stated by Manu² and others are also to be included. (13, 14, 15). 20 25 30 35

S'ūlapāṇi.

The Author mentions the characteristics of a faulty person in 35 the *pratyākalita* part.

Yājñavalkya, Verses, 13, 14, 15.

Wākchashuriti, ‘speech, gaze &c.’, to the speech of another, does not respond by a reply, and also another’s eye, he does not meet by

1. See note on page 690.

2. Ch. VIII. 57, 60.

looking back *Nirbhîyâli*, 'bites', i.e. distorts, exhibits a perturbation; The meaning is, is not able to cover these. As in the Râmâyana : "Although covered in the outward form, it is not possible to be covered; indeed from its force it exhibits the internal feeling of men." 'Outward form' i.e. 5 the bodily movements. The mouth, in the form of a changed colour and the like, the mental perturbation is inferred from the bodily change. These movements from place to place and the like are indicative of a defect (13, 14, 15).

Yâjñavalkya, Verse 16.

10 He who tries to substantiate a doubtful claim independently (of the means of proof), he who absconds, as also he who when summoned into the court does not say anything, is considered to be a false litigant and punishable as such.

Mitâksharâ :—Moreover, *sandigdham artham*, a 15 *doubtful claim*, even when not admitted by the (defendant) debtor, *yâh swatantrah*, *who tries to substantiate independently of the means of proof i.e. by confinement, arrest &c., sa hîno dandyas'cha, he is considered to be a false litigant and also becomes punishable as such.* Likewise he who after himself having admitted a claim, or after a 20 claim was established by means of proof, *absconds nishpatet*, when asked (to pay). He, moreover, against whom a claim has been filed and who even when *summoned, âhûto*, by the king into the court, *does not say anything*. He also is considered a faulty litigant and punishable as such. This is the construction.

25 As this verse has been introduced by the text¹ "is known as defective and unfit to be a complainant or a witness" it might be supposed that this verse is intended simply for detecting a faulty litigant (without more), so the word *dandyâ* (punishable) has been used. Moreover, from the text²: "even if one makes himself amenable 30 to punishment as guilty, he is not liable to have his suit dismissed" it has been shown that a party does not lose his claim. Intending to avoid such a conclusion here, the author has used the word *hîna* (*faulty*).

1. Verse 15 above p. 691 ll. 22-23.

2. of Nârada II. 25, see above verse (9) where the full text is cited.

Viramitrodaya.

Some deformities, although indicative of defectiveness, may even affect one who is not punishable; so the Author says

Yājñavalkya, Verse, 16.

Sandigdham, ‘doubtful’, i.e., not decided in his favour by the investigation, *artham*, ‘claim’, and therefore also *swatantrah*, ‘independently’, i.e., irrespectively of the certificate of success to be issued by the investigating authority, *sādhayet*, ‘tries to secure’, i.e., secures to himself; *yaścha*, ‘he also’, who when challenged for an inquiry, *nishpatet*, ‘absconds’, i.e., from the seat of investigation runs away. *Yaścha*, ‘he also’, *dhūtah*, ‘summoned’, does not speak anything, either in support of his side, or detrimental to the other side, *sa*, ‘such a one’, *hīnah*, ‘a false litignant’, i.e., a faulty one, and by reason of the offence of executing a claim under a doubt, ‘is declared by the Smṛtis also ‘to be punishable by the king’, *rājñā dandyāścha smṛtah*.

By the first (use of) *cha*, ‘and’, are included those who do not attend at the place of inquiry. By the second (use of) *cha*, ‘and’ is included one who when unable oneself, who does not appear at the trial through a deputy. By the (use of the) third *cha*, ‘and’ is indicated that he should be compelled to pay what is in dispute.

These deformities, moreover, not likely to be proved by any other than one who is a thorough expert, are only means of indication of a disturbance. Otherwise, the possibility of a perturbation may here be taken as conclusive. A decision by regard to these is called among the people a direct¹ deliberation. (16).

S'ūlapāni

The Author states the characteristics of a defeated party

Yājñavalkya, Verse 16.

If in a claim which is under a doubt one recovers independently of the (prescribed) means; *nishpatet*, ‘absconds’, i.e. without informing goes to another village; after he is brought for being questioned, when asked ‘what have you to say’, speaks nothing whatever—these three as false litigants are to be punished as such. Nārada² however mentions five varieties viz.: “One who changes his pleading, one avoiding a trial, one failing to appear, one who does not file an answer, and one

1. प्रत्यक्षविचारः See the remarks of the Mitāksharā above on p. 678, l. 1.
quoted in the note on page 679. प्रत्याकलितेन.

2. Ch. II. 38.

5 who absconds after he is summoned, are five varieties of a faulty litigant." "The absconder, after three fortnights; one who keeps silent after seven days; and one avoiding a judicial investigation, after a month, and an incongruous deponent immediately (are declared as vicious or faulty)." 16.

Now, where two men simultaneously go to the officer of justice, each as plaintiff *e.g.*, where, a certain person having obtained land by gift, after enjoying possession of it for some period went out on account of business into another country along with his 10 family; and a certain other person also obtained the same land by a gift and after enjoying possession for some time, went into another country. Thereafter both returned together and there was a quarrel each saying "this is my land, this is my land," and when both go simultaneously to the officer of justice, the question would be 15 on whom should the burden of proof lie? Anticipating this, the Author says:—

Yâjñavalkya, Verse 17.

When there are witnesses for both sides, those for him who claims priority should be taken first; and if the 20 first claim be invalidated, then those (*i.e.*, the witnesses) of the next claimant should be examined.

Mitâksharâ :—*Ubhayataḥ, for both sides, i.e.* for both the litigants. Witnesses, *sâkshiśhu, i.e.*, when they are available. *The witnesses for him who claims priority, sakṣināḥ pûrvavâdināḥ, should be examined; i.e.* one who says that he got (it) 25 by a gift and had enjoyed at a prior date. A *Pûrvawâdi, a person claiming priority,* is not one who first makes a complaint. The witnesses for such a one should be examined.

When, however, another person says:—"True it is that this 30 man first got it by gift and also was in possession, but the king gave this very field to me after purchasing from this very man, or that this man gave it to me after having obtained by gift"—then, the case of the first claimant becomes invalidated as it cannot be proved, and

when the case of the first claimant is invalidated, the witnesses should be examined of him who says that he got

* Page 14. a gift at a later date and was in possession (since).

This explanation¹—alone is proper. It would not be proper to put the following interpretation, *viz.*, if the answer is by denial, the witnesses of him who claims priority are examined; while in the answers of *res judicata* and *special plea* if the case of the first claimant be invalidated then would come in the witnesses of the next claimant. The same import having been laid down in the text—'Next, the plaintiff should immediately have written &c.',² there would be the fault of repetition. 5 10

The first (mode of) explanation has also been brought out clearly by Nârada³ who after observing—"In the case of a denial, the proof rests on the plaintiff, while in a 'special plea', on the defendant. For establishing a *former judgment* the (production of the) decree would constitute (sufficient) proof," says:—"When two persons quarrel for a point, and both have witnesses, the witnesses of him who sets up a prior claim shall be heard." 15

This rule has been specially mentioned as it differs from the rules of procedure for suits in general.(17) 20

Viramitrodaya.

"Then the plaintiff should cause to be written the means of proof of the allegations in the plaint", so it has been said. There, when the means of proof exist for both the plaintiff and the defendant, whose should be taken up (first) for consideration? So, the Author states the rule here 25

Yâjñavalkya, Verse 17.

Ubhayato, 'of both' *i. e.* of the plaintiff and also of the defendant, when witnesses and like other means of proof exist, *pûrvavâdinah*, 'of him who filed the plaint,' the witnesses and like other means of proof should be admitted; such is the general rule. 30

1. *i. e.* taking both as plaintiffs and not one as अर्थी and another as प्रत्यर्थी.

2. Yâjñavalkya 7 (2) page 672 above.

3. Ch II. 163.

Here, the Author states an exception : When the first side, i.e. in the form of the plaint, *adharibhûte*, 'is invalidated,' i.e. is proved to be weakened as compared with the answer, either on account of a stronger reason, or by reason of the plea of *res judicata*, the witnesses, &c., of the respondent happen to be accepted. This moreover has been particularly elaborated before already. (17).

S'ûlapâni

Yâjñavalkya, Verse 17.

One says, 'mine is this land by (right of) purchase'; another also 10 says 'mine is this land, by (right of) purchase'; thus when the answer of a special plea is equal, and witnesses of equal kind are adduced, the witnesses of the party lodging the plaint are to be accepted, and not of one who sets up a plea of priority.¹ Such an interpretation is proper as by regard to the text²: "In the case of a pledge, a gift or a sale, 15 however, the prior transaction preponderates," there would be the fault of repetition if the first claimant be invalidated by not adducing a stronger reason to an answer, the witnesses of the respondent should be taken. By the use of the word witnesses, are included documents and the like. (17).

20

Yâjñavalkya, Verse 18.

If a dispute is accompanied by a wager, then the defeated party should be made to pay a fine and the amount of his wager (to the king), and also the amount in dispute to the judgment-creditor.

25

Mitâksharâ :—Moreover, if a *dispute*, *vivâdo*, i.e. a judicial proceeding, be *sapânah*, *accompanied by a wager*,—staking is (the same thing as) wager; and that which contains this is one accompanied by a wager,—then *there*, *tatra*, i.e. in that proceeding which contains a wager, *the defeated party*, *hînam*, who has been 30 described above, the king should make him pay a *fine*, *dândam*, as also the amount of the wager laid by him ; and to the (judgment-) creditor the amount in dispute, *dandam*.

1. It appears that S'ûlapâni here differs from Mitâksharâ where mere priority in lodging a complaint is not given preference to a prior existing right (see text. p. 13. ll: 28-29). पूर्वस्मिन् काले मया प्रतिशृद्धीतमुपभुक्तं चेति यो वदति असौ पूर्ववादी, न पुनर्यः पूर्वं निवेदयति ।

2. See further Yâjn. II. 23,

Similarly where one being under the influence of anger, makes a stipulation thus :—"If I am defeated, I shall pay 100 *panas*", and the other (side) does not make any stipulation, then also a judicial proceeding is set in motion ; and when it is commenced, and if the person making the stipulation loses, then he himself should be made to pay a fine together with the sum stipulated. The other (party), however, if defeated, should be made to pay the fine, and not the stipulation as the text particularises it (*i. e.* his stipulation) as for one's own. 5

Where, moreover, one stipulates 100 and the other 50 only, there also in case of a defeat each should be made to pay respectively the amount stipulated by him alone. By the text "if the suit is accompanied by a wager" the Author has indicated (the existence of) a suit without a wager also. (18) 10

Viramitrodaya.

15

Generally, it is only when the means of proof for both exist that a suit with a wager comes about. By regard to this, the Author mentions the part to be performed by the defeated party in a suit with a wager

Yājñavalkya, Verse 18.

20

As characterised above if a suit exist, then in a trial with a wager, the investigating officer should compel the defective party who loses, to pay to the king or to the opposing party respectively as the case may be, viz., to the king, the penalty consequent upon the defeat ; to the opponent the amount which was the subject matter of the suit, and his own wager, viz., the subject matter as well as the amount. By (the use of) the word *tu*, 'however', in a suit without a wager, is excluded the payment of wager. By the first (use of the word) *eva*, 'only' is excluded the payment of the wager laid by the other party and not agreed to by himself. By the second, and accompanied by the expression *dhanine eva*, 'to the judgment-creditor only' is excluded the payment of money in cases other those involving a money claim, such as slander, &c. The first two *cha*'s are intended to include the payment of the penalty and the wager which are not payable. The last *cha*, 'and' is indicative of payment of all the three together, viz., 30 the penalty, &c. (18). 35

S'ûlapâni

Yâjñavalkya, Verse 18

"If I am defeated on a footing of equality, then as an additional penalty due for a defeat, I shall pay so many *panas*," thus where the defendant stipulates with extreme boastfulness, that is (known as) a suit with a wager. In such a case, the penalty for a defeated party, as also the wager laid by himself, should be caused to be paid to the king, and also the amount in the suit to the creditor. (18).

Yâjñavalkya, Verse 19.

10 After discarding all circumvention, the king should decide disputes according to the actual facts ; for even a real claim (based on actual facts) if not properly presented is likely to be lost in a judicial proceeding.

15 Mitâksharâ:—Moreover, chhalam, circumvention, what has been wrongly said ; nirasya, after discarding, after throwing off ; bhûtena, according to the actual facts, in pursuance of the real state of facts, a king should bring disputes to an end, vyawâhârân nayed-
20 antam nrpaḥ. Since, even a real claim, bhûtamapi i. e. a true case, anupannyastam, if not properly presented, i. e. if not properly pleaded, is lost, hîyatê, i. e. suffers a defeat in a judicial proceeding, vyawahârataḥ, at the trial on account of witnesses &c.

Therefore the actual facts should be found out. The presiding officer of a Court along with councillors, by gentle persuasion and such other means, should try in such a way that the plaintiff and the defendant would speak the truth only ; (for) in that case the decision would be given regardlessly of witnesses &c.

If, however, it is absolutely impossible to find out the real facts, (then) in that case, the second course is that the decision should be given by examining witnesses &c. As has been said¹ :—
30 "It (i. e. a legal proceeding) is said to have two courses, as it is capable of being in pursuance of facts, or founded on error. A fact is that which truly embodies the actual events. An error is what has been erroneously deposed to."

1. Nârada, I. 29.

There a decision given in pursuance of actual facts is the principal course, that founded upon error is only secondary. In a decision based on (the evidence of) witnesses and documents, the truth may sometimes be followed, sometimes not, as it is possible for witnesses &c. to deviate (from the truth.)

5

*PAGE 15.

Viramitrodaya.

As a suit is regarded two-fold on account of the distinction of being with or without a wager, so also by regard to its being founded on truth, or on error, it is two-fold. For it has been said¹: “By reason of its being founded on truth or on error, it is said to have two courses. Truth is what is linked with facts ; what has been declared by mistake, is error.” Thus the word mistake here is merely indicative of a proceeding which is not in pursuance of facts. There, as far as possible, a trial should be observed only in pursuance of facts ; so the Author says

10

15

Yājñavalkya, Verse 19.

Bhūtena, ‘according to facts’ in connection with the matter in issue by means such as peaceful negotiations &c. by the party speaking as to actual facts in the form of his movements or the actions of the other side by reference to dates, having discarded the statements in the nature of circumventions, *nṛpo vyavahārān nayet*, ‘the king should decide disputes,’ i. e. carry to their own results in the form of a decision.

At times a suit is likely to be decided even in pursuance of an error, so the Author says, *bhūtam*, ‘actual facts,’ i. e. a real fact although with proper connections such as witnesses &c., if not properly set out before the determination of success, in a suit to be managed, *hīyate*, ‘suffers a defeat,’ becomes impossible of accomplishment. In such a case, the trial will only be in pursuance of an error. By the expression, ‘even facts if not properly set out’ are included by extension all transactions well known as being in pursuance of facts.

20

25

30

‘There, a transaction proved according to rules of Sāstra is as under : “One who abandoning a strong ground resorts to a weak one, would not be allowed to resort to it again after the members of the judicial assembly have reached² the stage of success³. When⁴ a law

1. By Nārada I. 29.

2. जपेऽवधृते i. e. have recorded their decision as to who should succeed.

3. Kātyāyana, Verse 221.

4. Nārada I. 62, 63.

suit has been decided, evidence becomes profitless, unless a document or witnesses can be produced who or which had not been announced at a former stage¹ of the trial. As the (fertilizing) power of rain is thrown away on ripe grain, even so evidence becomes useless when the suit has been decided.”

Popular usage in transactions, such as “ If I do not go tomorrow, I am (to be considered as) defeated,” an agreement like this and others. (19).

Sūlapāni

10

Yājñavalkya, Verse 19.

“Truth is what rests on true facts. Error rests on a mistake of facts”, vide this text of Nārada², if real facts are clearly ascertained by means of other proofs, then whatever had been declared through error should be given up as not final, and by means of positively ascertained facts, judicial investigations should one conclude; as even actual facts if not put forth in a judicial court lead to a defeat; so Nārada³: “What through error is not declared, that even though it were an actual fact is lost at law; therefore, judicial trials should one investigate by regard to actual facts.” “Moreover by the king particularly by one who is anxious to maintain the (integrity of) law, by regard to the diversity of the human mentality, after discriminating the good from the not good”. (19).

“Even a real claim is lost in a judicial proceeding if not properly presented” the Author mentions an illustration of this text

25

Yājñavalkya, Verse 20.

Where the defendant sets up a denial and it is not confined to one only of the many particulars written in the plaint severally, and the claim is (afterwards) proved in

1. Asahāya has the following note on this: “‘This wicked debtor owes me money, and although this is supported by witnesses and other evidence, he declines to give it. Therefore he must be produced in my presence before the King’s Court.’ If the claimant says so, and does not produce his proof at the time of the evidence, but offers to produce afterwards, it cannot be admitted as evidence. But, if after making the statement, the claimant could not produce it owing to any accident etc., it may be offered, and it shall be accepted although the case had already been decided, and sureties were offered and taken.”

2. Nārada I. 29.

3. I. 64.

one particular, he should be compelled by the king to pay the entire claim. He (the plaintiff) should not, however, be allowed to recover (from the defendant) what had not been alleged in the plaint.

Mitâksharâ :—Naikam, *severally*, many particulars, *e. g.* gold, silver, clothes &c.; likhitam, *written*, allegation made by the plaintiff ; if the defendant *denies*, nihnute, *i. e.* conceals the whole claim, then, if the *claim is proved*, bhâvitah *i. e.* the defendant is made to admit, the entire claim *i. e.* with regard to silver &c. (also) as alleged in the plaint should be caused to be paid to the plaintiff *by the king*, nrpêna. 5 10

Na grâhyastuaniveditah, *should not, however, be allowed to recover what has not been alleged*. What had not been alleged at the time of the first complaint, but afterwards is being informed by the plaintiff saying that it was formerly forgotten, *he should not be allowed to recover*, na grâhyah *i. e.* to be (allowed to be) paid, by the king. 15

It must not be supposed, however, that this rule is merely textual¹; the falsity of the defendant's denial as to one particular having been established, it leads to the possibility of (establishing) its falsity as to other particulars also. Likewise, the truth of the plaintiff's allegations having been established in one particular, it raises the probability of its being true in other particulars also. Thus, from this very text of the Lord of Yogis² supported as it is by the rules of Logic which is only³ another expression for 'the rules of probative reasoning,' the resulting rule (that comes to be established) is that the king should cause the entire claim to be paid. 20 25

And when a suit is being decided in pursuance of the rules of logic, even if the real facts stood otherwise, no fault would attach

1. वाचनिकम्—based on a text. *i. e.* its soundness can be established even by the test of logic as will be seen from the next sentence.

2. *i. e.* the sage Yâjñavalkya.

3. तर्कपरनामसम्भावना

to the judges deciding the suit¹. As also (says) Gautama², after stating—‘Rules of logic are a means for arriving at a judicial decision. For getting at a decision with (the help of) it (logic), parties should be placed in their proper positions respectively,’ he
5 concludes³ thus : ‘therefore the king and the preceptor are blameless.’

Moreover it is not that the consequences of a (false) defendant being confronted in one particular extend only⁴ to his testimony not being accepted (as a reliable one) because the text is that ‘a party confronted in one particular should be made to pay the whole (claim)
10 by the king.’

The text of Kātyāyana⁵, however, *viz.* “Even in suits involving several counts, as much amount as the creditor (plaintiff) establishes by means of his witnesses, so much only does he get”, has a reference to (suits for a) paternal⁶ debt payable by the sons
15 and others. There the rule is that sons and others in their answers in a suit with reference to several claims saying ‘I do not know’, do not become guilty of prevarication ; (and) even if a claim is proved against him in one particular he does not become a false litigant, and so the rule—“where the defendant denies all the particulars &c.”
20 has no application there, as there is no concealment, and therefore no (scope for the application of the) rules of logic. The text of Kātyāyana⁵ *viz.* ‘Even in suits involving several counts &c.’ is a general rule. Putting aside the ‘false answer’ which is the subject of a special treatise, the author treats it as an answer of ignorance.’

1. It may also be thus rendered ; Even if it were different from the real facts. ‘वस्तुनो अन्यथात्वेऽपि । ’

2. Chap. II. 23–24.

3. Chap. II. 32.

4. एतावद् &c. i. o. only thus far, to this extent. It is not that from this text the incapacity would extend to the length of only the party’s case not being accepted. The Author says that it extends further, *viz.* ‘नृपेण सर्वे दाय्यः’. The meaning is that in the case of false witnesses the only consequence is that their testimony is not accepted ; whereas in the case of dishonest litigants, not only that their testimony is not accepted but that they are punished to the extent of the entire claim in dispute being thrown out.

5. Verse 473.

6. पित्रादिक्रिणविषयम् is a better reading and is adopted from Bālambhatti. See Bālambhatti page 24, 1. 18. पुत्रादिदेयपित्रादिक्रिणविषयम् ।

It may be said that by the text¹ viz. "In suits for the recovery of debts and the like which are of a *quasi-finite* character, the amount in dispute being already ascertained, if the allegation is for a less or a greater amount, the claim does not succeed", Kātyāyana has said that in suits containing more points than one, if only one point or more points than one which are involved are proved by witnesses, the whole claim does not succeed. That being so, when only a portion is proved, from where does follow the proof of the portion that is not proved ?

To this the answer is that where witnesses are produced as the means for proving the entire claim alleged in the written plaint, there in case the witnesses depose to a portion only or to much more than what was claimed then in such a case the whole claim does not succeed ; this is the meaning of that text. Even there, from the wording of the text viz. "being ascertained...does not succeed", a doubt would even lie here as before and thus there is scope for other evidence (means of proof), on account of the rule in the text² "after discarding all circumvention &c." 10
15

In the case of criminal complaints, however, the whole point alleged is considered as established even if only a portion is established by witnesses produced for proving the whole case ; because crimes and the like are considered as proved by so much proof, as also on account of the text of Kātyāyana³ viz. "In complaints for cohabitation with women, crime, and theft, what is known as the point at issue is considered as established in its entirety if only a portion of the point in dispute is deposed to by the witnesses." (20). 20
25

Viramitrodaya.

In the course of an exposition of the function of the king, the Author gives illustrations of trials based on facts, as also those influenced by mistakes

Yājñavalkya, Verse 20.

30

Likhitam, 'written', in the plaint &c., the written allegations made ; *naikam*, 'many', in more than one (particular), such as, gold, gems, clothes, &c., the defendant who *nihnute*, 'denies', i.e., conceals

1. Verse, 396.

2. Yājñ. II. 19.

3. Verse, 397.

the entire claim, he, *ekadeśe*, ‘in one particular’ such as, merely as regards gold or the like, *vibhāvitah*, ‘proved’, i.e., by means of witnesses, &c., has been completely proved to have taken, *sarvam*, ‘the entire’, claim which is the subject matter of the complaint, *nṛpena*, ‘by the king’, 5 to the plaintiff, *dāpyah*, ‘should be compelled to pay’.

This, moreover, in regard to one particular (item) of the plaint which was established, when other particulars have not been proved here as also in the case of a special agreement, that ‘if even one particular is proved, I shall pay up the whole.’ There, the first has connection with 10 actual facts as may have occurred, the second is based on a subterfuge.

Aniveditah, ‘not alleged in the plaint’, i.e., not set out in writing before. The particle, *tu*, ‘however’, has the sense of *cha*, ‘and’. As to the part other than the one particular in regard to which the claim is proved, such as gems, &c., although not proved should not 15 be ordered by the king to be paid. This also is an example of a trial connected with an error. Vide the text of Kātyāyana¹: “Even when only a portion of the matter alleged has been deposited to by the witnesses, in charges of intercourse with women, heinous offence, and theft, the whole of the matter alleged shall be deemed to be proved.” In cases of 20 theft and the like, although proved in one particular, the whole is to be paid; so the Mitākṣharā. (20).

S'ulapāni

Yājñavalkya, Verse 20.

One, who of the many counts in the written allegations, such as 25 gold, silver, copper &c., denies all, he, when proved as to one particular such as gold &c. all i. e. silver &c., he must pay. If when proved as to one particular, having ascertained the plaintiff's, he says “this other also was forgotten by me”, such a one not having been written down at the time of the plaint, should not be admitted, and no royal penalty (20).

30 It may be said “Where the defendant sets up a denial, and the denial is not confined to one of the many particulars” &c. is a *Smṛti* text; so is also “In suits involving several counts &c.” a *Smṛti* text. Thus there being a mutual conflict between these two *Smṛtis*, why are they not considered as unauthoritative as they are

1. Verse 397.

opposed to each other ? Why resort to (the rule of) adjustment¹ ? So the Author says :—

Yājñavalkya, Verse 21 (1).

* PAGE 16. Where two smṛtis conflict, principles of equity as determined by popular usage shall prevail. 5

Mitāksharā :—Where smṛtyoh, *between two smṛtis*, there is mutual virodhah, *conflict*, there for the purpose of removing the conflict and determining² the matter in issue nyāya, *principles of equity*, comprising general rules together with the exceptions, 10 balavān, shall prevail, i.e. (will) have force.

From where should these principles be obtained ? so the Author says :—wyawahārataḥ iti, *as determined by usage etc.*, obtained from general usage i. e. ancient usage as observed among the elders and as determined by the two tests of affirmation and negation.³ Hence even in the present case establishment of the rule is the only proper test. Thus should be applied even in other cases the rule regarding the adjustment and the rule of option. 15

1. विषयव्यवस्था see note 4 further on pp. 708-709.

2. Note that here विषयव्यवस्थापनादौ means विषयव्यवस्थापनाय.

3. अन्वय-व्यतिरेक—note these two terms, which are likely to recur often and have an important place in the rules of logic and also of interpretation. अन्वय predicates a constant and invariable concomitance of the middle term or हेतु and the major term or साध्य (हेतुसाध्ययोद्यातिरन्वयः) The familiar instance of this is:—यत्र यत्र धूमः तत्र तत्र वन्हिनीः. ‘Wherever there is smoke there is fire’—the invariable co-existence of fire with smoke is called in logic the relation of ‘invariable Concomitance’ or अन्वयव्याप्ति. Corresponding to and the opposite of the above is what is known as the व्यतिरेकव्याप्ति or an assertion of the concomitance of the absence of साध्य and the absence of हेतु e. g. यत्र यत्र वन्हिनीनास्ति तत्र तत्र धूमोऽपि नास्ति “Wherever there is no fire, there is no smoke also.” The student will find a fitting comparison with this in the (1) Universal A Proposition of the English Logic e. g. All x is y and the (2) converted A proposition e. g. All not-x is not-y, respectively. A cause or हेतु is said to be connected with its effect by अन्वयव्यतिरेकव्याप्ति when both the affirmative and negative relations between the thing to be proved and the cause that proves can be equally asserted; such a हेतु alone makes the argument perfectly sound and incapable of refutation. This process of arriving at the Vyāpti or universal proposition corresponds to the methods of agreement and difference in Mill’s Logic. (*Apte*). The application of this in the context will be seen from the following illustration: The question is whether a particular usage is proved to exist or not. Instances of its affirmation and an entire absence of its negation or non-enforcement would prove the custom under the अन्वयव्यतिरेक texts,

To this general rule the Author mentions an exception

Yājñavalkya, Verse 21 (2).

The rule however is that the science of law is stronger than the science of politics.

5 Mitāksharā :—The science of politics e.g. the work of Ausanasa stands already excluded by the text
 An exception ‘in conformity with the principles of legal to the general rule. science¹’; so the ‘science of politics’ referred
 to here is the one forming part of and incorporated
 10 in the ‘science of law’ and characterised as the science of polity.
 In the case of a *conflict*, *virodha*, between two smṛtis i.e. from the science of law and the science of politics (respectively), the science of law is stronger than the science of politics ; this is the *rule*, *sthitiḥ* (lit.: position) i.e. limit. The meaning is that although in themselves
 15 there is no distinction between the science of law and the science of politics as the authors of both are of equal² (authority), still the principal subject (of treatment) being law, while politics having only a subordinate position, the science of law has force. The importance of *Dharma* has already been demonstrated before in the beginning of
 20 this treatise³. Therefore, in the case of a conflict between the *Dharmaśāstra* (science of law) and the *Arthaśāstra* (science of politics), undoubtedly the *Arthaśāstra* will yield ; and there is no scope for any rule of adjustment or of option for a *Vishaya-vyawasthā*⁴.
 (विषयव्यवस्था) or a *Vikalpa* (विकल्प).

1. Yājñ II. 1 p. 1. ll. 13 & 14 above.

2. Or it may even be translated as, ‘as both are the compositions of the same (author.)’ समानकर्तृकतया ।

समान—equal, or it may also mean, same. The meaning is that even if the same author lays down two texts, one in the nature of a धर्म text and the other an अर्थशास्त्र text, still having regard to the fact that it is the धर्मशास्त्र which is the प्रधान or principal subject of treatment, the texts pertaining to the धर्मशास्त्र will have force.

3. i.e. in the Āchāradhyāya. Introductory chapter I verses 1–9.

4. Note these two terms विषयव्यवस्था and विकल्प.

विकल्प (Vikalpa) means option i.e. the rule of option. विषयव्यवस्था means an adjustment of the several subjects by appropriating each to its proper place.

What¹ is the illustration for this (proposition) ? Not certainly the text of Manu² viz.—“ One may slay without hesitation a desperado³ who approaches (with a murderous intent) whether (he be) a preceptor, a child or an aged man, or a Brāhmaṇa deeply versed in the Vedas (351). By killing a desperado (intent on doing harm), the slayer incurs no guilt, whether (he does it) publicly or in secret ; (for in such a case) fury recoils upon fury⁴. (352). Also, “ One should (certainly) kill on the field of battle a desperado who approaches with an intent to kill, even though he were a special scholar of the Vedas, and thereby he does not incur the sin of a Brāhmaṇa-killer ” and similar others are the *Arthaśāstra* texts.⁵ “ This expiation has been prescribed for unintentionally killing a Brāhmaṇa ; but for intentionally slaying a Brāhmaṇa no atonement is ordained,” and

5

10

According to Sanskrit writers if there be a direct and clear conflict between two texts, both lose their binding character, and one is left to accept either at his option. There is also another course which is resorted to and that is by assigning the affirmative (मात्र) and negative (अभाव) clauses to their proper and appropriate places and thus removing the conflict. An example will make this clear. “ A Brāhmaṇa *may* eat flesh.” This conflicts with the general prohibition of flesh against Brāhmaṇa. Then follows the appropriation (विषयवस्था) viz. “ a northern Brāhmaṇa *may* eat flesh—a Southerner *must not*.” The reader will note the two texts, an apparent complicit between which has introduced Verse 21.

A very good instance of विकल्प and विषयवस्था may be found in Yājñ II. 277 “ शब्दावापते गर्भस्य पातने चोत्तमो दमः । उत्तमो वाऽधमो वाऽपि पुरुषस्त्रीप्रपापणे ” Commenting upon this विज्ञानेश्वर says पुरुषस्य स्त्रियाश्च प्रपापणे शीलवृत्तायपेक्षयोत्तमो वा व्यवस्थितो वेदितव्यः । and this is further made clear by विशेषभट्ट in the सुबोधिनी thus—शीलाचारवतः पुरुषस्य तथा स्त्रियाश्च मारणे उत्तमसाहस एव दंडः । शीलाचारराहितायास्तु मारणे प्रथमसाहस एवेति विकल्पव्यवस्था ज्ञेया ।

It will thus be noted that either of these have a scope when there is a conflict. The Author here says that there is no room for resorting to either as there is no conflict at all.

1. From this clause down to p. 711. line 17 is stated the objection ; or the पूर्वपक्ष. 2. Ch. VIII. 351.-352.

3. आततायिन् This word has been translated as ‘an assassin’ in the Sacred Books of the East; but having regard to its wide connotation a *desperado* would be a proper rendering.

4. Note the gloss of Kullāka. यस्माद्दन्तुगतो मन्युः क्रोधाभिमानिनी देवता हन्यमानगतं क्रोधं विवर्धयति । i. e. the violence of the assailant generates and fosters the fury of the person attacked.

5. Manu. XI. 89.

such others are *Dharmas'atra* texts ; and it is proper in the case of a conflict between the two, that the *Dharmas'atra* should have force, (since), these two (kinds of) texts not being likely to be in (reference to) one subject, there would be no conflict, and the consideration of 5 their force or weakness does not arise.

Moreover, premising with the text¹ viz. "the twice-born may take up arms where the law is being flouted &c." and proceeding with the text² "in their own defence and in the defence of the *dakṣhinā*, in a battle-field, and in the protection of women and Brāhmaṇas ; he who kills within the limits laid down by law, incurs no guilt." 15 one is not amenable to the punishment for slaying in a fair fight an assailant as also one who is intent upon killing women or Brāhmaṇas (while engaged) in self-defence or in the defence of the *dakṣhinā*— wealth collected for distribution among the Brāhmaṇas assembled at a sacrifice—and (other) utensils used for a sacrifice, the text viz. one may etc. a preceptor, or a child or an aged man³ etc. has been given as an explanatory⁴ affirmation of the same⁵. Implying thereby that one may kill even the preceptor and others who are absolutely immune from being killed, when they attack with a murderous intent, 20 what then of others ? From the use of the words *wā*⁶ (or), and also of *api* (even) in (the text) " even though he were a special scholar of the *Vedas*" &c." the inference is not (intended to be) suggested that the preceptor and others should be killed, as also from the text of *Sumantu* viz. " There is no guilt in killing an assailant (with a 25 murderous intent) excepting (when it is) a cow or a Brāhmaṇa." and also according to the text of *Manu*⁸ viz. " Let him not injure the preceptor, nor him who expounds the *Vedas*, nor the mother or the father ; nor also the Brāhmaṇas, cows nor an ascetic." This text is used with a purpose (lit. meaning), inasmuch as it is intended to 30 prohibit the killing of the preceptor and others (when they approach) as assassins, and not otherwise, as the prohibition of murder in

1. Manu. VIII. 349.

2. Manu. VIII. 350.

3. Manu. VIII. 351.

4. अर्थवादम् .

5. i. e. Chap. VIII. 349-350.

6. In Manu. VIII. 350 (See above).

7. See above p. 709 1. 5

8. Oh. IV. 163.

general is already deducible from the general principles (of law). Even the text¹ "by killing a desperado the slayer incurs no guilt" is intended to apply to others than Brâhmaṇas. Since, (by the text) "an incendiary, a prisoner, one armed with a deadly weapon, a robber and one who causes the deprivation of land, wife, and wealth, these six are (known Ātatāyinas) desperados or felons" and also "one who is armed with a sword, poison, and fire, who is ready to utter a curse with hand uplifted, who kills by means of *A'tharvana* charms, who is a traitor to the King, who violates a married woman, who is ever ready to prick a hole (wherever found) one should know these and all such others as desperados or felons (Ātatāyinah)," the Ātatāyins have been indicated generally. Therefore the result is that when Brâhmaṇas and also others are killed as assailants by inadvertance while being warded off by one acting in self-defence and having no intent to murder, in such a case a light expiation will be (sufficient) and no punishment from the King (will be necessary). Therefore another illustration should be cited here.

(To the above objection) the answer is: "As acquisition of a friend is superior to the acquisitions of gold or

* PAGE 17

20

land, so one should endeavour for his acquisition"

An Answer

is an *Arthaśâstra* text. "In conformity with the principles of legal science, and divested of anger and avarice" is a *Dharmaśâstra* text. There occurs a conflict of these two in some cases. As e. g. in a suit where the procedure is of a fourfold character; if success is secured to one party, acquisition of a friend would be made, but the *Dharmaśâstra* would not be followed; while if success is secured to another party, the *Dharmaśâstra* would be followed; but (it) would prejudice the acquisition of a friend, in such a case the *Dharmaśâstra* has more force than *Arthaśâstra*. Hence A'pastamba has shown the importance of expiation in the text². "This very same (penance is ordained) for him who when his *Dharma* (duty) and *Artha* (gain) come into conflict, chooses the *Artha*." By the expression "This very same" the twelve years' expiation³ is intended.

1. Manu. VIII, 352.

2. I. 9. 24, 23.

3. See Apastamba I. 9, 24, 20.

Viramitrodaya

Indeed, when there is a conflict between two *S'āstra* texts, how is a suit based on facts to be disposed of? So the Author says

Yājñavalkya, Verse 21.

5 *Vyavahārato*, ‘as determined by usage’, in the matter of a point in a law-suit, *Smṛtyoh*, ‘between two *Smṛtis*’, i.e., two texts of *Dharma sāstra*, when there is a mutual ‘conflict’ *virodhe, tu*, ‘indeed’, *nyāyah*, ‘principles of equity’, i.e., the principles of logic helpful in effecting an adjustment of the points at issue, *balavān*, ‘shall prevail’, i.e., shall determine. In short, whichever *Smṛti* is adjustable in a particular topic according to logical principles in that matter, that *Smṛti* is authoritative. By the word *tu*, ‘however’, has been excluded the power of *Smṛti*, when in conflict with *S'ruti*. As has been said¹: “When there is a conflict between a *S'ruti* text and a *Smṛti* text, *S'ruti* alone preponderates. On a conflict mutually *inter se*, however, what is in accordance with equity is authoritative.”

The use of the word *Smṛtyoh*, ‘between two *Smṛtis*’, is indicative of the texts of the same category. Therefore it should be understood that where between two *S'ruti* texts only or two *Artha sāstra* texts only 20 there is a mutual difference, principles of logical reason are decisive.

By the use of the word *tu*, a second time, are excluded the *Purāṇas*. By this, when compared with the *Purāṇas*, the *Dharma-Sāstra* incorporating the *Smṛtis* is not (more) powerful. On the other hand, as with two *Smṛtis*, when there is a conflict mutually between a *Smṛti* text and a *Purāṇa* text, the greater or less power or weakness is determined by regard to the principles of logic, which are helpful in securing the subject of the plaint. (21).

S'ulapāṇi

Yājñavalkya, Verse 21.

30 When a conflict arises between two *Dharma Sastra* texts, the suit should be decided by following the maxim of “the general rule and the exception,” Thus: “He¹ who enjoys without a lawful title, as by his father and three prior ancestors, the property cannot be taken away from him because it has descended through three lines of ancestors,” and 35 “He² who enjoys without title for ever so many hundred years, the ruler

1. See Nārada Ch. I, 91.

2. Nārada Ch. I, 87.

of the land should inflict on that sinful man the punishment ordained for a thief", of these two texts, one of *Dharmaśāstra*, and another of *Arthaśāstra*, when there is a conflict, the *Dharmaśāstra* text propounding proprietorship by a successive enjoyment for three generations (although without a title, has force. It is in conflict with the *Dharmaśāstra* text laying down a punishment for possession without title eventhough for one hundred years. So Nârada¹: "Where there is a conflict between a *Dharmaśāstra* text and an *Arthaśāstra* text, giving up the *Arthaśāstrâ* text, one should act up to what is stated in the *Dharmaśâstra*". (21) 5 10

It has been said above² that "Next, the plaintiff should immediately have written down the evidence by means of which the matter in dispute is to be established". What are those means? anticipating this the Author says :—

Yâjñavalkya, Verse 22.

15

Evidence has been stated to consist of a writing, possession, and witnesses. In the absence of any of these, the ordeal is said to be another (means of evidence).

Mitâksharâ :—That by (means of) which a thing is measured or discriminated is *pramâna*, *evidence*. That, moreover, is twofold, viz. human and divine. Of these mânavam, *human* evidence is (of a) threefold (character) viz. likhitam, bhuktih, sâkshinah. *writing, possession and witnesses*; so it has been laid down, kirtitam, by learned sages. Then (again), writings are of two kinds. A Sâsana, *royal grant*, and Chîrakam, a scroll or deed, A Royal grant has been defined before³. A scroll or deed (is as) will be defined (hereafter)⁴. Bhuktih, *possession*, means enjoyment by (actual) occupation. Sâkshinah, *witnesses*, i. e., of the character and kinds to be described hereafter⁵. 20 25

1. Oh. 39.

2. Yâjñ. II-7 (English Tr. p 672. lines 14-16 above).

3. Yâjñ. I. 318. p. 530.

4. Yâjñ. II. 84.

5. i. e., in Section V, "Of the Witnesses."

It may be said that a writing and witnesses may properly be accepted as evidence as they may be included in the *śabda*¹ mode of proof (*Pramāṇa*), as they serve as a medium i. e. of expressing (the meaning of) words.² But how can possession be a mode of proof? To that the answer is that even possession when satisfying certain (specified) conditions will invariably and correctly measure the probative value of the sale and other transactions which are (set up as) the basis of ownership, and assist an inference (to be drawn), or in the absence of a direct inference, a conclusion may be drawn by implication, and thus it (i. e. possession) may be included either in an *inference* (*Anumāna*) or an *implication* (*Arthāpatti*) and be a (good) means of proof.

In the absence of any of all these three (modes of proof) viz.: writing &c., the author has mentioned³ the evidentiary value of any of the ordeals, the character and kinds of which will presently be described, subject to the conditions as to the kind, country, time and the (particular) thing. That ordeals are (to be accepted as) a mode of proof only in the absence of human evidence is inferable from this very text, as the nature and conclusiveness of ordeals are derived from traditional lore, i.e., *Āgama*-Texts. Hence where two persons simultaneously go to an officer of law in reference to a matter in dispute between them, and one adduces human evidence, while the other resorts to the divine test, in such a case the human evidence alone should be accepted. To the same effect is Kātyāyana⁴:—"If one (party) sets up human evidence and the other resorts to the divine test, in such a case the King should accept the human evidence and not the divine test". Even so where human evidence is available for establishing (only) a portion of the principal point (at issue), even there the divine test should not be resorted to. Thus, in a suit where the complaint is that 'having received a hundred at this rate, the defendant does not pay it back' and upon a denial (of the claim by the defendant) there

1. One of the several *Pramāṇas*. The *Naiyāyiks* recognise only four viz. प्रत्यक्ष, अनुपान, उपमान and शास्त्र. The *Vedantins* and the *Mīmāṃsakas* add two more viz. अनुपलब्धि and अर्थापाति, while the *Sāṅkhyas* admit only three viz. प्रत्यक्ष, अनुपान and शास्त्र.

2. शास्त्राभिव्यक्तिः = शास्त्रस्य अभिव्यक्तिः &c.

3. i. e. in the principal verse of Yājñavalkya.

4. Verse, 218.

are witnesses for (establishing) the acceptance of the loan, but not for the (particular) amount or the rate of interest, and the plaintiff offers to prove his case by an ordeal, in such a case, inasmuch as under the rule¹ (of procedure), viz., 'regarding proof of a particular portion only,' the particular proof about the amount and rate of interest follows (by implication), there is no scope for an ordeal. As has been observed by Kātyāyana²:—“Even if the human evidence offered by the contending parties cover only a portion of the subject-matter, it should be accepted, and not the divine test even if it (*i.e.*, the divine test) be sufficient to cover the whole suit.” As for the rule.—“The trial of secret offenders must (necessarily) be by means of ordeals”, even this (test) is intended to govern those cases where human testimony is unavailable. As to what has been said by Nārada³ viz. “(Where a transaction has taken place) in a forest, in a solitary place,⁴ at night, or in the interior of a house, and in cases of heinous offences or of denial of a deposit, a divine test is permissible”; even that is (applicable) when human evidence is absolutely impossible (to be adduced). Therefore the general rule (that naturally follows) is that a trial by ordeal is allowable only where human evidence does not exist.

5

10

15

20

25

An exception to this, however, has to be noticed⁵ viz. “In trials concerning heinous offences of a long⁶ standing or in the case of assaults or slander or concerning acts proceeding from violence, the ordeal itself are the witnesses.”

Moreover a similar rule is found in some places about a writing, etc. As in ‘determining rules laid down for pūgas,⁷ the S’reṇis, and Gaṇas and other trades, the evidence (to be adduced) is

* Page 18. 1. एकदेशाविभावितन्यायः also called एकदेशाविकृतिन्यायः as e. g. शाकर्णे पुच्छे वा छन्दे श्वेत मवति नाशो न गर्दमः इति। See the महाभारत् on the Śutra स्थानिवदादेशोऽन्तिव्यो I. I. 56 Cf. the rule of ‘Part for the whole’ 2. Verse 219. 3. II. 30.

4. Dr. Jolly takes निर्जन as an adjective of अरण्य and translates “in a solitary forest”, but see the gloss of Asahāya on this:—“अरण्ये वनमध्ये पत्तने वा निर्जनप्रदेशे ।” 5. Kātyāna, Verse 229.

6. Or it may also be interpreted as ‘in protracted proceedings, in trials of heinous offences &c. the प्रकान्तवाद and साहस्रवाद being taken separately. Cited as of Br̥haspati in V. Mayuakha, see. p.11, l. 14.

7. गूग and अणी, See Yājñ. II. 30 and Mitāksharā where Vijñāneśwara thus defines.—गूगः—समूहाः। भिन्नजातीनां भिन्नवृत्तीनामेकस्थाननिवासिनां संघाताः। and अणयो—नानाजातीनामेकजातीनामव्येकजातिकमोषजीविनां संघाताः।

writing and not an ordeal or witnesses¹.' Similarly²—'In suits regarding the right of door or way, or the right of erecting or making these, as also in suits regarding the enjoyment of a surface or watercourse, the most important (means of) proof is that of possession ; and neither an ordeal nor the witnesses.' So also³ " In suits regarding valid and invalid gifts, in disputes between a master and his servants, in cases of rescission of (the contract of) sale, and also where after purchasing a thing one does not wish to pay the price, in disputes (arising out) of gambling (with dice) and 10 betting (with animals), wherever a dispute arises in any of these cases, witnesses have been prescribed as the means of proof, and not an ordeal or a writing."

Viramitrodaya

As if distributing the relative strength or weakness of human and 15 divine evidence as means of proof, the Author proceeds

Yājñavalkya, Verse 22.

Likhitam, 'a document', i.e. a writing capable of helping the determination of the point in dispute; *bhuktih*, 'possession', i.e., the occupation of the village, &c., the subject-matter of the dispute; 20 *sākṣino*, 'witnesses', as the Author will describe hereafter.

By the use of the word *cha*, 'and' the Author adds the syllogistic reasoning otherwise known as *Pratyākalita* as another means (of a decision). Thus fourfold means of human evidence 'has been laid down', *uchyate*, by scholars, and recommended to be followed. The 25 afore said *cha*, follows here also ; thereby the oaths are other-worldly means but distinguishable from ordeals as stated by Nārada⁴ is added here also. (22).

S'ūlapāṇi.

Yājñavalkya, Verse 22.

These three means of proof, in cases of recovery of debts and like others, in the absence of documents &c. of the nine ordeals such as the Balance and the rest, any one is (regarded as) the means. Their strength and weakness are stated by Kātyāyana:⁵ "Divine means of proof is not permitted, when witnesses exist ; so also when there is a document, 35 neither ordeals or oaths".

1. Kātyāyana, Verse 225.

2. Kātyāyana, Verse 226.

3. , . . . , 227, 228.

4. See Ch. I. 30 and Ch. II. 30,

5. Verse 223.

As possession is determined in the form of an inference, the use of possession is characterised as inferential. So even Brhaspati¹, "Witnesses, documents, and inference, thus human evidence is regarded as three-fold. Divine evidence has been stated to be nine-fold beginning with the Balance and ending with Dharma. But the mention of possession is indicative of greater force than document". (22). 5

When there is evidence on both sides, and when there exist no circumstances which would help in discriminating the strength or infirmity of either, (a question might arise) how should the strength of several proofs adduced by the plaintiff and defendant be 10 determined? So the Author says

Yâjñavalkya, Verse 23 (1).

In all² civil disputes regarding property, evidence adduced in support of a later transaction preponderates.

Mitâksharâ :—In disputes for payment of debts, and others 15 in all civil disputes, sarveshu arthaviwâdeshu, later transaction, uttarâ kriyâ—that which is established is a *Kriya*, i. e., investigation or proof. When the evidence in support of a later transaction is established, and it preponderates, balavati, the party setting it up becomes successful; and (in such a case) even if the allegation in the plaint be established, the party setting it up is defeated. As e.g. where a certain person establishes a loan by proving receipt, while the other party proves its non-existence by repayment, in such a case where the receipt and payment back are (duly) established by (proper) evidence, this (evidence of) payment back has 20 force and the party who sets up repayment succeeds. Similarly, 25 where after first taking (a loan) at two per cent. a party acknowledged

1. Oh. V. 18.

2. अर्थविवाद—This has been rendered by Mr. Mandlik as 'money-disputes.' Having regard, however, to the proper meaning and scope of the expression here, it would not be an accurate translation. An अर्थविवाद is a dispute regarding title to or possession of property and the property may be moveable or immoveable. This has been made clear by the author himself in his gloss on Yâjñ. Verse (2) see. Sanskrit p. 11 1. 5. सर्वेष्वर्थविवादेषु, मन्युक्ततेषु'. An अर्थविवाद in used in opposition to a साहसाभियोग, मन्युक्ताभियोग or any such suits the origin of which is in some threat or similar act and not in a substantive claim to property.

(to pay) at three per cent., in such a case even when there is (good) evidence for both the facts, the acknowledgment at three per cent. has force. Because the general rule is that of two contradictory facts unless the prior fact is refuted, the truth of the later one does 5 not become established, as it comes later (in order). It has also been said "a later fact is not established, unless the prior one is refuted."

The Author mentions an exception to this (rule)

Yâjñavalkya, Verse 23 (2).

In the case of a pledge, a gift, and a sale, however, 10 evidence in support of the prior claim preponderates.

Mitâksharâ :—In (any of) the three suits concerning a pledge and others, proof of a prior claim alone preponderates. It is thus : when a man after mortgaging his only field with one, and after obtaining some loan, again mortgages it with another and obtains 15 something, in such a case, it (*i. e.* the field) belongs to the first only and not to the second. So also in the case of gifts and sales.

It may be urged that there being no ownership (left) in the subject-matter of a mortgage, thereafter a second

An Objection. hypothecation does not appear permissible ; similarly, also the gift or sale of what has been

20 (already) given or sold does not arise at all ; and therefore that this text is (thus) meaningless.

To this the answer is, even when no ownership exists, and still when from ignorance or avarice one has a mortgage made again (over the same subject-matter), in such a case the prior transaction

25 alone has force. Thus it is proved beyond doubt that this text is based on reason.

Viramitrodaya.

By the text¹ : ' When the first claim is invalidated, &c. ', it has 30 been stated that when the answer has greater potentiality, the evidence for the defendant is taken. There the potentiality of the answer consists in the greater strength of the evidence as exhibited in the answer, so the Author points out the (element of) strength in the evidence.

1. Yâjn. II. 17. See p. 696 ll. 18-20 above.

Yājñavalkya Verse 23.

Sarveshu, 'in all', vivādeshu, 'in disputes', where the subject matter is the recovery of a debt, of the evidence on the two sides, *i.e.*, of the plaintiff and the defendant, set out by them each as the means of securing their points, between the two, that which is of a later period, has greater strength. Thus, where the statement of one is, 'a debt has been taken from me by him and he owes it', and the statement by the other is, 'Yes, indeed was taken, but it was paid off', there the evidence in support of repayment has a greater claim. Similarly, when the first loan was contracted under an agreement of a *Kākini*¹ as the rate of interest, but later on at the rate of a *Pana*, and that has been by some arrangement, in such a case, evidence in proof of the later arrangement has a greater claim. And thus, where money deposited with one has been deposited with another, there it should be understood that the bailment with the latter has greater force. 15

The word *eva*, 'however', is to be used as coming after the word *uttard*, 'later'. Thereby, an equality of force of the prior one with it has been excluded. Similarly is the word *eva* in *purvaiva*, 'prior only', is to be explained. In some places, in the place of 'in all civil, &c.', the reading is, 'prior in civil, &c.', *purvā tu iti*. 20

Here, the Author states an exception; *A'dhau*, 'in the case of a pledge', *i.e.*, in a transaction of pledge, *pratigrahe*, 'in the case of a gift', and in the case of a sale also, the prior one of the same kind in each case has a claim in preponderance. The similarity,² moreover, consists in the prohibition to dispose of at will, and the destruction of one's ownership. Thus where after a mortgage with one, a mortgage is effected with another, there, the first mortgage is stronger; also, where after an acceptance or purchase by one, another has resorted to acceptance &c. as a means for (acquiring) ownership, there the first acceptance, &c., is more forceful. This is the meaning in substance. 25

As against a mortgage, a transaction of acceptance as a gift, and the like, being destructive of the right of ownership, whether of a prior or posterior date is indeed stronger. Thus it should be understood that by regard to its being not obstructive of the free right of disposal by the owner as he likes, whether of a prior date or of a posterior date, a 35 mortgage which is obstructive of the free right of disposal by the owner

1. A quarter of a *Pana*.

2. In a transaction of a pledge, the freedom of disposal of the object of the pledge which remained with the owner before is restrained, and the right of ownership becomes extinct in the other two transactions.

according as he likes is more powerful. This very thing, says, Nārada in Ratnākara: “ Having made a deposit with a mortgage with another, where one makes a mortgage, or sale there, the later transaction is more powerful.” (23).

5

Ś'ulapāṇī.

Yājñavalkya, Verse 23

‘In all,’ i.e. such as the recovery of debts and the like, the later transaction i.e. acceptance of loan &c. is stronger i.e. is entitled to be pursued. One and the same thing, was deposited with one under a 10 loan and taking it from there, it was deposited under a loan with another, there, proof of the later transaction preponderates. In the case of pledges etc. however the prior one is stronger. That which is accepted as a gift is an acceptance (23).

While wishing to establish the evidentiary value of possession 15 when accompanied by certain qualifying circumstances, the Author proceeds to mention other results which flow from a certain kind of possession

Yājñavalkya, Verse 24.

Of him who while he sees his land being enjoyed by 20 another (for twenty years) looks on and does not object, the loss of (the right to) land occurs after twenty years; of money (the loss takes place) after ten years (under similar circumstances).

Mitāksharā:—*Pareṇa*, ‘by another’, i.e. by a stranger, 25 by one having no connection (whatsoever); *bhujyamānām*, *being enjoyed*, i.e. either land or wealth; *pasyataḥ abruwataḥ*, of one who looks on and does not object,’ i.e., does not prevent him; e.g. thus—“This is my land; you should not trespass”; of that *bhumervimsatīvarshiki*, of land (thus continuing) for twenty 30 years, *hānirbhavati*, occurs a loss, caused by the enjoyment for twenty years without protest. *Dhanasya*, of wealth, however, (i.e. moveables) such as the elephant, horse etc. the loss occurs *dasawārshiki*, after ten years.

Indeed this is not proper: Certainly ownership does not become extinct on account of non-protest,

(1) Objection. non-protest not being known either in popular usage or in *S'âstra* as a cause of extinguishing ownership, (just) as a gift or a sale is. Nor is ownership acquired by possession for twenty years; because possession is not the (means of) proof of ownership; also because (of the rule that) evidence (*pramâna*) does not *create* the matter to be established (*prameya*)¹ it (i. e. the *pramâna*,) has also not been mentioned among the circumstances giving rise to a title by ownership. For (in the text) 10 “A man becomes owner by inheritance, purchase, partition, seizure or finding. The additional (mode of acquisition) in the case of a *Brâhmaṇa*, is gift; in the case of a *Kshatriya* gains of conquest, and in the case of a *Vais'ya* and *S'ûdra* gains (by labour)”, **Gautama**² only mentions these eight as the sources of title by ownership, 15 (he does) not (mention) possession.

Nor would it be correct to say that this very text demonstrates a twenty years' possession as an originating

* Page 19. cause of ownership. A title by ownership or (2) Objection. its origin are indicated (even) by general popular 20 repute, and not (necessarily) by the *S'âstra* alone.

This, however, will be more fully dealt with in the chapter on Partition. The text of **Gautama** is only intended as (laying down) a rule of limitation.

Moreover, the text³ viz. “He who enjoys without a title for 25 ever so many hundred years, the ruler of the

(3) Objection. land should inflict on that sinful man the punishment ordained for a thief.” is opposed

1. प्रमेय (*Prameya*) is that which is to be established; ‘the point at issue.’ प्रमाण (*Pramâna*) is the means of establishing the point at issue. The meaning in the text is that a *pramâna* or evidence can only indicate or prove something which is already in existence; it cannot *create* it; i. e. a *pramâna* cannot be the ‘originating cause’ of a *prameya*. अनुत्पादकत्वात्।

2. X. 38-40.

3. See Subodhini, p. 13. 1 12. and Balambhaṭṭi p. 31. ll 26-28. on this.

4. Bâlambhaṭṭa and others ascribe this text to *Manu*. It is not to be found in the editions of *Manu*. It is, however, found in the Nârada Smṛti. I. 87.

to the theory that possession without title is the source of ownership. Nor also would it be proper to say that the text "He who enjoys without a title &c." is meant to apply to a possession without notice (to the owner), and the text 5 "Passyatobruvataḥ¹ &c." to possession with notice (to the owner). The text "he who enjoys without a title" being general in its statement. As Kātyāyana² also has said : "One who has forcibly taken away beasts, women, or men should not rest his case on possession (of these) nor his son also"; the rule has thus been 10 established, that moreover an extinction of title is not possible in case of a possession with notice as it is improbable that any cause of an extinction of title would (be suffered to) exist.³

Moreover, it should not be supposed that inasmuch as the evidence in support of prior acts preponderates in cases of pledges, 15 gifts, and sales, this (*i. e.* the present) text is intended to lay down by way of an exception the preponderance of the evidence of transactions later in date amounting to twenty years' possession in case of land, and ten years' possession in case of wealth (or moveables). Since in the case of these in reality a transaction itself is not possible, it is 20 only (that which is) one's own (property) that is fit to be pledged, given away, or sold ; and there can be no ownership over what has been pledged, given away, or sold. Moreover a penalty has been laid down for a gift and acceptance of that over which he (*i. e.* the giver) does not possess ownership, thus⁴ : "He who accepts (as a gift) that 25 which may not be given, as also he who gives it shall both be punished like thieves, and both made to pay the fine ordained for an offence of the highest degree (*Uttama-Sāhasra*)."
Moreover if this verse were to be (accepted as) an exception to [the rule regarding the three

1. *i. e.* Yājñ. II. 24.

2. Verse, 316.

3. The construction here is rather peculiar. The clause समक्षमेणे etc. in l. 8. is to be taken as part of the objection already commenced and not as a separate objection. The construction here is typically terse—मिताक्षरा. The meaning would be fully brought out by the following complete statement of the component parts in their order:—समक्षमेणे हानेरसंभवः। हानिकारणाभावात्। An extinction of title is not probable in the case of a possession with notice; because no one would allow any circumstance to exist or continue which would in the end lead to an extinction of title.

4. See Nārada Ch. IV. 12.

(transactions) viz. pledges etc.] the verse next following (*i. e.* No. 25) does not appear proper as an exception in the cases of *pledges*, *boundaries* etc. Therefore the extinction of (title to) land etc. does not appropriately follow at all. Nor is the cause of action lost. For in the text :—"Of him who neglects and stands by if a period as aforesaid is passed, the suit does not succeed," Nârada has mentioned the extinction of a *remedy* at law when there is laches and such laches is not accompanied by circumstances explaining it; he does not lay down the extinction of the *right* (itself). Similarly in the text "If the owner is neither an idiot¹ nor a minor and if his chattel is enjoyed (by another) before his eyes, the remedy by a suit is lost to him and the (adverse) possessor becomes entitled to the property." even Manu² has indicated the loss of remedy only at law and not of the title itself. The loss of the remedy at law would be in this way. The person in possession might say—"This man not being either an idiot, an infant or a minor, I have enjoyed (the property) in his presence without a protest for twenty years and there are several witnesses in (support of) this. If it was (a fact) that I was illegally in possession of his property, then why should he have stood by for so long a time?" and here the (true) owner would have no answer. This even although he would have no answer as (indicated) above, an investigation on facts is still open—vide the rule:³ "After discarding all circumvention, the King should decide disputes according to actual facts".

It may also be said: "Even though the title is not extinguished, nor (also) is the remedy lost, still there would be the *danger* of the loss of remedy, and in order to avoid this it has been laid down as an advice that one should not stand by. (To this) however (the answer is that) it is not so; for, possession (which is) within memory cannot be a cause of creating any apprehension as to the loss (of title); (and moreover) if the only object was to lay down the rule that (one) should not stand by, the use of the term *twenty* would be without a purpose."

1. Mark the following text of Nârada distinguishing बाल, पौगंड, and शिशु. गर्भस्थसदृशो ज्ञेय आऽष्टमाद्वत्सराशिशुः। बाल आषोडशाद्वर्षात्पौगंड इति शस्यते ॥ १-३६;

2. Ch. VIII. 148.

3. Yâjn. II. 19 Page 700. ll. 10-14 above.

It may next be said that by the use of the word twenty, it is intended to lay down the rule that possession for more than twenty years (in itself) serves as a refutation of all objections regarding the defects or flaws in the document, as says Kâtyâyana¹; “Where possession is enjoyed of property belonging to one who is competent, for (a period of) over twenty years and under a document, that document is (presumed to be) free from (all) defects.” Even that is not so; for in that case the rule that after twenty years all objections regarding flaws in a document become barred, having a general application, it would not be possible to set up an exception even in the case of pledges etc.² As says Kâtyâyana³: “If a pledge is actually enjoyed as such for twenty years, it (i. e. the pledge) is proved by that document (which then becomes) free from all (objections as to) defects.” So also⁴, “After a boundary dispute is settled, a document describing the boundaries has been ordained; its defects should be pointed out before twenty years (have elapsed).” By this, the text, viz. “(the loss) of money takes place after ten years” is also refuted. Therefore another meaning should be expounded for this verse.⁵

To this the answer is:⁶ Here the loss intended to be indicated is that of the profits (or accession) of the land as

The Answer. well as of the wealth, not of the corpus itself, nor * Page 20. of the right of a suit at law. For, even if at law the owner gets (back) the land after twenty

years' possession without protest (by him), still he does not get a right to follow the proceeds, both on account of his own fault in the form of non-protest, as also on account of this text. In the case of a possession without notice, however, he (i.e. the owner) secures

1. Verse, 299.

2. i. e. to say, and thereby the text of Yâjñavalkya II. 25 would be meaningless.

3. Verse, 300.

4. Verse, 301.

5. Here ends the objection which began with the words “नन्वेतदनुपत्तम्” on page 721, l. 1. above.

6. Vijñâneśwara draws the following सिद्धांत after the above discussion. The reader will note this as a very good instance of a सिद्धांत of the Sanskr̥t logic. Vijñâneśwara first gives a literal meaning of the verse at p. 18 ll. 25-27. Then he starts a discussion from p. 18 l. 28 and draws the conclusion or सिद्धांत on p. 20, ll. 15.

the right to follow the proceeds also, under the text, *Pas'yato &c.* (Yâjñ. II. 24), and also in possession with notice and protest, under the text, *Abruvatah &c.* (see above p. 720. I. 19-23), before twenty years, he succeeds (even) when there is possession without protest, as the term twenty is used.

5

It may be objected, thus: Indeed, in that case loss of profits¹ would not follow, inasmuch as the profits arising therefrom possess (the characteristics of) ownership. (To this the answer is), True; it would be so where the accession would remain in the same condition without detriment to its natural state as is the case with beetle and jack fruit trees &c.² That, moreover, which arises (as profit) from the land and is perishable by use; in such a case there is loss of ownership as the thing itself has perished. By the text³: “He who enjoys without a title even if it is for many hundred years, the ruler of the land should inflict on that sinful man the punishment ordained for a thief,” it would follow that assessing in (terms of) an equal money value an amount equal (to the profits) should be made payable as (is done) in the case of a thief; but this conclusion is refuted by the text, “a loss takes place after twenty years.” Moreover the punishment from the king still exists even (when the enjoyment is) for more than twenty years on account of a double

10

15

20

1. Mark the word फल (*Phala*). Its literal meaning is fruit. Here it has to be variously rendered as fruit, profits, proceeds, and accession according as suits the context in each particular case. c/o *Fructus* of the Roman Law.

2. The meaning is that such accessions as remain unaffected even when the fruits have been removed would not fall under the term फल in the sense that the right regarding फल would be lost. In other words, where the accession is itself the फल as in the case of crops, groundnuts &c. there is no third stage between the land and the fruit and in each case there would occur the फलहानि. But where the fruits or profits are distinct from and a further addition to things which in themselves are accessions to the land, such things have a permanence of their own and are to be distinguished from the fruits which are perishable and are of a transitory character. Accessions of the former kind do stand without any detriment to their state e. g. mango-tree, though the fruits are taken away the tree, which in itself is distinct from and an accession to the lands, stands unaffected.

3. Nârada. I. 87.

reason viz. the possession being without title, and there being no exception stated (to the general rule).

Therefore by reason of the default of the owner in the shape of neglect or laches as also on account of this text, the rule is established that those proceeds are not recovered as are lost for more than twenty years. This also explains the text—"in the case of wealth the loss takes place after ten years." (24).

S'ulapâni.

Yâjñavalkya, Verse 24.

10 By not raising a dispute when (land) is in the possession of another and with good will is being enjoyed by him, after twenty years the right of ownership becomes lost. That which is covered by twenty years' is twenty years' (possession). Vyâsa states a special rule: "For twenty years, one whose land is enjoyed by others in this 15 world, when a competent ruler exists, the right of ownership of that man cannot be established".

Dhanasya, 'of the wealth' such as of the cow &c., *daśavârshiki hâniḥ* 'the loss occurs after ten years'. *Manu*¹: "Whatever (chattel) an owner sees enjoyed by others during ten years, while, though present, he says 20 nothing, that (chattel) he shall not recover". (24).

Yâjñavalkya Verse 25.

Except in the case of pledges, boundaries, open deposits, wealth belonging to the dull in intellect, the minor, as also in the case of sealed deposits and even in the 25 case of wealth belonging to the kings, women and Brâhmaṇâs.

Mitâksharâ :—The pledge and a boundary and an open deposit (together make up the compound expression) 'pledges, boundaries and open deposits'; the dull in intellect and the minor (together make up the compound) 'the dull in intellect and the minor,' Their wealth (is) "the wealth of the dull in intellect and the minor", "pledges, boundaries and open deposits" and "the wealth of the dull in intellect and the minor" (make up the compound expression) *âdhisimopanikshepa-jadabâla-dhanâni*,

1. Ch. VIII. 148.

pledges, boundaries, open deposits and the wealth of the dull in intellect and the minor; tairvinâ, excepting these.

Upanikshepo, an open deposit, is wealth placed for safe custody in another's hand after exhibiting the quality and the quantity. As says Nârada¹: "Where a man entrusts any property of his own to another in confidence and without suspicion, it is called by the learned a deposit—a (separate) title of law." Placing near is (called) upanidhih, deposit. 5

In the case of a pledge &c. no loss (of title) occurs of land even after twenty years, or of wealth after ten years, even when the owner looks on and does not protest; because (in that case) that² kind of default of a party is wanting, and also inasmuch as in each such case exist circumstances which explain the (apparent) delay. 10

Moreover the possession of a pledge is held with the condition of the pledge attached to it, and thus there is no default by a party even if there is delay.³ A delay is permissible in the case of (disputes regarding) boundary as it is easy of proof on account of the marks made permanent by (the spreading of) husk,⁴ fire etc. In the case of open and ordinary deposits, use and enjoyment (of the subject-matter) is prohibited; and where such possession is in transgression of the prohibition, the neglect or delay is explained as the party gets the property with interest and profits; in the case of the 'dull in intellect and the minors,' delay is very justifiable on account of the dullness and the minority; in the case of the king, on account of his absorption in various duties; in the case of women, on account of ignorance as well as immaturity (of intellect) or unskilfulness. As for a learned Brâhmaṇa delay is proper, as he is engrossed in studying 15
20
25

1. Ch. II. V. I.

2. That kind of default तथा विवर्य i.e. of the kind which would bring about a loss of title.

3. i.e. even if the suit is not brought within the period ordinarily assigned for suits, of that nature. उपेष्टि means-not bringing an action—laches.

4. तुष—(tusha) is the husk of paddy. It, among other things, is interred into a pit dug deep and covered over by the earth. The marks created in this way acquire a permanence which is not lost and serve as good evidence in deciding boundary disputes; see further on Yâjñ's II, 151 Vijñâneśvar's comments.

and teaching (the Vedas), and in thinking over their import and bringing it into practice.

Therefore in the case of pledges etc., there being a (proper) reason for (explaining) delay in all cases, no loss of profits ever occurs (even) when there is possession with notice and without protest.

Viramitrodaya.

Means of evidence have been stated, such as documents, &c. There inferential evidence has been expounded; that consisting of witnesses will be stated later on; and in the manner of the rule¹ ‘of the needle and the kettle’, the Author expounds possession as a means of evidence, in six verses

Yājñavalkya Verses, 24, 25

Without a mortgage or a similar other transaction in regard to one's own, even while one is looking on, and not asserting that ‘this land is mine’ and thus not protesting against the possessor of one's land, being occupied ‘by another,’ *parena*, i. e. by one other than oneself, ‘for a period of twenty years,’ *vinśativarṣhiki*, i. e. by a continuous possession, the loss occurs.

Of one's i. e. of one's ownership of the movables such as the cow &c., which is held in possession, the loss occurs after ten years. This is the special point (of difference), *Hāniḥ*, ‘loss’ i. e. destruction. (24).

Ādhīḥ, ‘pledge’ i. e. an encumbrance; *simā*, ‘boundary,’ i. e. the boundary of a village &c.; *upanikṣepah*, ‘an open deposit,’ i. e. an article made over to another after ascertaining its quality &c., *jadasya*, ‘of the dull in intellect,’ *bālasya*, ‘of a minor,’ or of an adolescent below sixteen years in age; *dhanam*, ‘property,’ such as the cow, land &c.

Upnidheḥ, ‘of a deposit,’ i. e. of property placed in a vessel without being measured out; and the properties relating to the king, a woman, and a learned man. By the use of the word, *api*, ‘also,’ the Author includes properties mentioned by Brhaspati² viz.: “Such

1. सूचिकटाहन्याय—‘The maxim of the needle and the kettle’. It is used to denote, that when two things, one easy and another difficult, are intended to be done that which is easier should be first attended to, as when one has to prepare a needle and a kettle, one should take up the needle first, as it is easier as compared with the preparation of a kettle.

2. Ch. IX. 12.

wealth as is possessed by a son-in-law, a learned Brâhmaña, or by the king or his ministers, does not become their property as owners, even after a long period of time." (25).

S'ûlapâni.

Yâjñavalkya, Verse 25.

5

Upanikshepah, 'a deposit', placed in a vessel, without mentioning (the details) and with a seal, what is deposited, thus stated by Nârada¹. *Jadah*, 'a dullard', one dull in intellect; *bâlah*, 'a minor', i. e. one who has not reached the age of sixteen; *upanidhih*, 'a bailment', what is made over for use out of affection, *striyah*, 'women' e. g. female servants and the like. Excepting these, in other properties, after the prescribed period of occupation, the right of the owner becomes extinct. These do not become the property of the person in possession.

Bṛhaspati² mentions another rule also: "Such wealth as is possessed by a son-in-law, a learned Brâhmaña, or by the king or his ministers, does not become their property even after a long period of time". "Of the weak, indolent, those afflicted with a disease, the terrified and the travellers, property which belongs to them under a Śâsana grant, cannot be taken away by possession, even if possessed". Śâsanârudha, 'entered in a Śâsana grant' i. e. engrossed on a copper plate or the like. (25).

The Author mentions a rule imposing special penalty in cases of pledges &c.

Yâjñavalkya, Verse 26.

A trespasser upon pledges etc. should be made to pay the principal amount to the owner, and also to the king a fine of equal amount or according to (his) capacity.

Mitâksharâ:—*Of pledges &c.*, âdhyâdinam i. e. (the text extending) as far as the wealth of 'learned Brâhmaṇas' (in verse 25 above); *trespasser*, one who bases his title upon the strength of long-continued possession dhanam, *the amount*, i.e. that *principal amount* the subject of dispute.

Here the clause *dâpayet*, *should be made to pay*, *dandam cha tatsamam*, to the owner, is an *Anuwâda*³ and the clause as

1. Here according to S'ûlapâni an *Upanikshepa* is a sealed deposit, while the Mitâksharâ and the Viramitrodaya interpret it as an open deposit. 2. Ch. IX. 12.

3. A *Vidhi* is the principal statement and an *anuwâda* is only an explanatory repetition of a *Vidhi*; उद्देश्य or अनुचाद is also sometime referred to as प्राप्त, and विधेय as अप्राप्त e. g. प्राप्ताप्राप्तविविकन्याय.

The meaning is that payment of a fine, the imposition of a penalty is the principal thing, while restitution or compensation to the owner is only a subordinate one.

The words उद्देश्य and विधेय require a special notice. उद्देश्य is the subject of an assertion; it is otherwise called अनुचाद, an explanatory repetition

also a fine equal to it, i. e. equal to the amount in dispute should be made to pay to the king, is the *Vidhi*. Although a fine of an equal amount is not in the case of a house, lands &c, still the penalty mentioned further on (*Yājñ. II. 155*) viz.

5 * Page 21. 'For destroying boundary marks, and for encroaching beyond &c.' should be adopted.

If perhaps, the trespasser, on account of his immense riches is not (likely to be sufficiently) punished by a fine equal in amount to the principal, then he should be made to pay an amount according
 10 to his capacity—(i. e.) so much should be caused to be paid, by as much as his arrogance would be tamed down. For in the text¹:—
 "They declare that the word *danda* is derived from *damana* (taming down or restraining); therefore he (the king) should restrain the unrestrained." the word *danda* is used in the sense of restraining
 15 or taming down. He, however, who does not possess wealth even equal in amount to the principal, should be made to pay only so much as would (serve to) punish him. He, moreover, who has no money whatever, should be punished by the (several modes of punishment such as) *dhigdanda* and others. For Manu also says²:
 20 "He should punish first with the expression (*dhik*) fy ! or shame ! then by (a harsh) reproof; thirdly by a fine (in money), and after that, by the punishment or chastisement."

The punishment or chastisement of the body has been indicated to be tenfold in the case of persons excepting
 25 Brâhmaṇas. So says Manu³ "Manu, born of the Self-existent has mentioned, in the case of the three (lower) varṇâs (orders) ten places for (inflicting) punishment; but a Brâhmaṇa shall go unhurt (from the country); (the ten places are) the organ, the belly, the

of, or reference to, what is already mentioned; विधेय is the fact, or the quality asserted of the subject; it is otherwise called the predicate, and is to be proved or established. The उद्देश्य is already known or assumed as established, while the विधेय is that to establish the connection of which with the उद्देश्य is the object of the proposition. To take an illustration: "Devadatta is wise." Here Devadatta is the उद्देश्य or the subject, and being already known or assumed as established is from another point of view also an अनुवाद; but "wisdom" is that which is to be established with reference to Devadatta, and is therefore the विधेय.

1. of Gautama X. 28. 2. Ch. VIII. 129. 3. Ch. VIII. 124—125.

tongue, the two hands, the two feet, the eye, the nose, the two ears, the wealth, and also the (whole) body." It should be observed that the punishment should be administered only to such parts of the body as the organ &c. by means of which an offence has been committed ; or (he) should be made to serve on labour, or be consigned to a prison-house. As has been said by Kātyāyana¹ ; " If it is found that he is unable to make the payment of money, he should be made to work under his orders ; if unable, he should be consigned to a prison-house ; excepting (in the case of) a Brāhmaṇa ". In the case of a Brāhmaṇa, however, in the absence of money, prevention of the act, etc.' should be ordered ; as says Gautama² : " Preventing (a repetition of) the deed, publicly proclaiming his crime, banishment, and branding (are the punishments for a Brāhmaṇa) and he (i.e. the king) who does not do his duty (by inflicting punishment) &c.³" Nārada⁴ also after laying down the law viz. " Corporal punishment, confiscation of entire property, banishment⁵ from the town and branding, as well as amputation of the (guilty) limb are (declared to be) the punishments for Sāhasa of the highest degree ; this law of punishment is ordained for all (castes) indiscriminately," has said,⁶ " Excepting (only) corporal punishment in the case of a Brāhmaṇa. A Brāhmaṇa must not be subjected to corporal punishment. Shaving of the head, banishment from the town, branding on the forehead with a mark of the crime of which he has been convicted, and expulsion after parading on an ass shall be his punishments." The rule for branding has (there) been laid down (thus)—" For violating a Guru's bed (the mark of) a female part shall be impressed ; for drinking liquor, the sign of a tavern ; for theft, a dog's foot ; and for murdering a Brāhmaṇa headless corpse."⁷ As for the text⁸ of Āpastamba, viz. " In the case of a Brāhmaṇa, his eye-sight should be blocked," the meaning thereof is that at

1. Verse, 479.

2. XII. 47.

3. The text given here is not complete. The full text of गौतम being अप्वृत्तो प्रायश्चिन्ती सः i.e. the king who does not do his duty in this way makes himself liable for a penance.

4. Ch. XIV. 8. 9.

5. वञ्ज् is used here in the sense of प्रवञ्ज्-send into exile.

6. Ch. XIV. 9, 10. 7. Manu. IX. 237. 8. II. 10. 27, 17.

the time of banishing a Brâhmaṇa from the town his eye-sight should be blocked by means of a cloth, etc., and not that his eyes should be pulled out. For otherwise there would be a contradiction with the texts of Manu and Gautama, viz., "a Brâhmaṇa should 5 be exiled unhurt" "a corporal punishment is not (laid down) for a Brâhmaṇa." So enough of prolixity.

Viramitrodaya.

In the case a pledge and other kinds mentioned above, by reason of the force of possession, not only of the person in possession is there 10 no title by ownership established, but on the other hand, for one who takes it away by the force of enjoyment, there is even punishment; so the Author says

Yajñavalkya, Verse 26.

15 *Ādhyādinām*, 'of pledges &c.' particularly as owner, *hartāram*, 'trespasser,' one who appropriates it at his pleasure, *dhanine*, 'to the owner' i. e. to the owner of the property pledged, *dhanam*, 'the property' in the form of the pledge which is the subject of dispute, *dāpayet*, 'should cause to be paid,' the inquiring officer.

20 *Tatsamam*, 'equal to that,' i. e. in specie or by the value, equal to the pledged article, or in accordance with the capacity of the trespasser: if he has moderate wealth, less than that, and if possessing more wealth, even larger than that, a 'penalty,' *dandam*, should be caused to be paid to the king.

25 By the use of the word *cha*, 'and,' is added the banishment &c. of one who has not even ordinary wealth. The collection of indeclinables such as *atha*, *api*, and *wa* is indicative of option. (26).

S'ūlapani.

Yajñavalkya, Verse 26.

30 One taking away the wealth of the owner by means of a pledge &c. the Royal officer should compel to be restored to the owner. A fine equal in amount to it. In the case of an incapacity to pay a fine to that extent, even a small amount. (26).

It has been laid down that possession is evidence of title of ownership wherever possession is an invariable accompaniment of ownership. As, however, every kind of possession is not necessarily coupled with ownership, it may be asked, what kind of possession (is it that) is evidence? So the Author says

5

Yâjñavalkya, Verse 27 (1).

Title is superior to possession excepting where it (*i.e.*, possession) has descended from a line of ancestors.

Mitâksharâ :—The origin of ownership, such as gift, purchase &c., is (called) *A'gama, title*. It is more powerful than even possession, inasmuch as possession as an index of ownership, is dependent upon title. As says Nârada¹ “After (establishing) a clear title, possession obtains an evidentiary value. Possession without a title which is not clear does not make (any) evidence (of ownership).”

15

Nor, moreover, can it be said that the title to ownership can be obtained from mere possession, as it is likely that property which belongs even to others may be enjoyed by trespass &c. Hence also has it been said²: “He who pleads possession, only and no title of any sort, should be considered as a thief in consequence of his pleading such illegitimate possession.” Therefore the conclusion is that only that possession which is coupled with the five characteristics, *viz.*: that it is with title, long-continued, uninterrupted, without a protest, and with notice to the opponent is (good) evidence (of ownership). Moreover it has been stated³: “Even possession is five-fold, *viz.*: it is with a title, long-continued, uninterrupted, without a protest (from the opponent) and with notice to⁴ the opponent.”

20

25

Sometime, however, possession is accepted as evidence and (in such a case) it does not depend upon title, so the Author says :

30

1. Ch. I. 85.
2. By Nârada ch. I. 86.
3. By Vyâsa.
4. *i. e.* in the presence of the defendant.

Vinâ pûrvakramâgatâditi, excepting where it has descended from a line of ancestors ; pûrvakramah, line of ancestors, is the (continued) line of the past three ancestors such as the father and the rest. Vinâ, excepting, that bhoga, possession,

5 * Page 22. which has come down in this way, A'gamah abhyadhikah, title is superior ; this is the context. The meaning is that such a possession being even superior to title is (good) evidence independently of title.

Even then, it is independent of the knowledge of a (lawful) 10 title, and not of its existence itself. It should be marked that the existence of title is deducible from that (*i.e.*, possession) itself. Moreover, the text 'excepting when it comes down from a line of ancestors' refers to immemorial¹ possession ; while the text "title is superior to possession" refers to possession within memory. Hence 15 also in the case of possession within memory, it (*i.e.*, possession) has evidentiary value only when it co-exists with (the means of) knowledge of title, because if the absence of knowledge is not here properly accounted for, it is possible that an (absolute) absence of (a legal) title may be presumed. In the case of immemorial possession, however, a long continued possession is itself evidence (of ownership) independently of the knowledge of title, because in that case there is an absolute absence of the means by which want of knowledge of the origin (or title) is accounted for. This very thing has been made clear by Kâtyâyana² "In cases (falling) within the 20 memory of man, possession in the case of land, is regarded as evidence of ownership when it is with title. But in cases (extending) beyond human memory, enjoyment by three generations suffices, on account of the absence (of knowledge) of (the proof of) title." Time within the memory of man extends as far as a 25 hundred years. As there is the S'ruti, "a (*purusha*) man has a hundred years' (duration) of life, *Anugamâbhâvât*, on account of the absence of proof &c., *i.e.*, owing to the absence of a positive certainty as to the non-existence of title on account of the 30

1. Here there is a mistake in the print; a p. 22 l. 3 for स्मारकाल read अस्मारकाल.

2. Verse, 321; Comp. Nârada I. 89.

non-existence of proper means of the knowledge of title¹. Therefore possession creates ownership when it is for more than a hundred years (which is), uninterrupted, without a protest (with the knowledge), and in the presence of the opponent and when the origin of title has not been determined, inasmuch as a (legal) title is presumed in the absence of (proof to) the contrary. Even in the case where possession extends beyond the memory of man, it is not evidence (of ownership) if there is a tradition about its being without a title. Hence also has

5

1. योग्यानुपलब्धिः—mark this term. उपलब्धि means ज्ञानम् or knowledge; and an अनुपलब्धि is its absence. An अनुपलब्धि may occur in two cases, viz. (1) where there is a capacity for the perception, but still there is want of perception; and in this case the अनुपलब्धि is योग्या; and secondly (2) where there is an absolute absence of capacity for perception and therefore there is want of perception in which case there is योग्यानुपलब्धयभावः. Thus, घटज्ञानाभाव may be possible in two cases (1) where the घटज्ञानाभाव is due not to an absolute absence of the means of perception of the घट such as eyes &c. but still there is ज्ञानाभाव. Here no doubt there is an अनुपलब्धि in spite of the existence of circumstances necessary for an उपलब्धि i. e. there exists an initial capacity for the perception, but still an imperception occurs and so the अनुपलब्धि is योग्या. Stated in simple language, where there is योग्यता for उपलब्धि but still there is an अनुपलब्धि we have a योग्यानुपलब्धि. See *Bālambhatti* p. 42 1. 3. “योग्यत्वे सत्यनुपलब्धिः।” (2) where, however, there is an absolute absence of the (योग्यता) capacity for perception, there is no possibility of an उपलब्धि at all as e.g. on account of blindness &c. in such a case there is अनुपलब्धि but not a योग्यानुपलब्धि, so there is a योग्यानुपलब्धयभावः।

In the present context, where the possession is recent, it is possible to ascertain the origin, but there may exist circumstances which may account for the non-knowledge (अनुपलब्धि) of the origin, in such a case there is योग्यानुपलब्धि. In the case of long-continued possession the origin of the title is not known, and it is not known because it is absolutely impossible to know it. Here there is योग्यानुपलब्धयभाव।

The purport of the above may be put in short and simple language thus: Non-perception of a thing may be due to two circumstances viz. (1) absence of means of perception but with a capacity to perceive, and (2) absence of the capacity for perception—In (1) it is योग्यानुपलब्धिः, in (2) it is योग्यानुपलब्धयभावः e.g. the question is whether a man is learned? For determining this, learned men are required to test the capacity of the man who says that he is learned. If learned men are available and still the capacity or learning of the man does not come out it may be properly said that the learning does not exist at all—here there is a योग्यानुपलब्धिः. But if learned men are not available and the capacity remains undetermined on that account there is an अनुपलब्धिः which may be explained by a proper reason and therefore there is a योग्यानुपलब्धयभावः।

it been said¹ that “He who enjoys without a title even if it be for many hundred years, the ruler of the land shall inflict on that sinful man the punishment ordained for a thief.”

It should not, however, be supposed by the use of the singular number in “He who enjoys without a title” and the use of the word *even* (*api*) in “even if it be for many hundred years,” that a punishment has been ordained (only) for the first acquirer without title even if the possession is held for a long time. This does not hold as (in that case) in the case of the second and the third generation even 10 a possession without title may come to be accepted as evidence (of ownership), as Nârada² has said : “In the case of the first acquirer, gift is the (proper) cause (of title); while for the intermediate generations possession with title (is the cause.)” Therefore in all cases of possession without title the rule (laid down in) “he who enjoys 15 without a title &c.” should be observed.

As to what has been said³ viz. “When possession has been successively held, even though unlawfully, by the three ancestors and the father, the property (so held) cannot be taken away from him, because it has descended through three (successive) lives in order,” 20 even there, it should be construed as “by the three ancestors along with the father.” There also the expression “descended through three (successive) lives in order” is indicative of a period beyond the memory of man. (Because) if it be taken (only as) referring to three (particular) lives, it is possible that three lives might be over even 25 within the space of one year and possession without ownership might become evidence (of ownership) even in the second year (of occupation). And in that case there would be a conflict with the Smṛti⁴ “In cases (falling) within the memory of man, possession in the case of land, is regarded as evidence of ownership when it is 30 with title.”

The text *annyāyena api yadbhuktam* ‘when possession has been held even though unlawfully &c.’ should be construed as follows—“what has been possessed cannot be taken away, even though it be unlawfully (held); what then where the illegality (of the possession)

1. By Nârada I. 87.

2. See Kâtyâyana, Verse 322.

3. Nârada I. 91.

4. Of Kâtyâyana, Verse 321.

is undetermined", inasmuch as the word *api* (even though) has been used in it.

As to what has been said by Hârîta *viz.*: "What has been held in enjoyment in continuation by three (generations of) ancestors without any title whatsoever and what has descended through three (successive) lives in order, cannot be taken away", even there, (the expression) *atyantamâgamam vinâ* 'without any title whatsoever' is to be explained as without any available title &c. and not without any title at all. It has (already) been said that there cannot be ownership even with a hundred (generations) of possession if the title itself is not available. The import of *kramât tripurushâgatam* 'descended through three lives in order' has been explained. 5 10

It may be said : "Possession cannot properly be accepted as evidence of ownership, because when it is within

An objection. the memory of man it is dependent upon title. 15

For, if title is known by other means (of proof), then ownership having been established by the same (means), possession is not evidence either of ownership or of title. And if title is not known by other means, how can possession which is qualified by title be evidence ?" (To this) the answer is as follows : 20 Even possession which is accompanied by a title though proved by other means when uninterrupted creates ownership in course of time. A title though proved is not sufficient to create ownership in course of time, (if it be) without possession, as a gift or sale in the meanwhile might create a title to ownership. Thus the whole 25 is unobjectionable. 27 (1)

It has been said that possession is evidence (of ownership) when it is accompanied by title; then (it may even be said that) title is evidence (of ownership) independently of possession. So the author says 30

Yâjñavalkya, Verse 27 (2).

In a title also there would be no force if there is no possession even for a short time.

Mitâksharâ :—In (the case of) a title where *bhuktih*, possession even for a short time does not exist, no ; in that (*i. e.* that title) there is *stokâpi* not full force *Balam*.

This is the meaning intended. A *Dâna*, gift, is that where
5 there is a cessation of one's ownership and the commencement of another's ownership is secured;

* Page 23. if the other accepts it as his own, and not otherwise. Acceptance, moreover, is threefold. *Mental*, *Mânasah*,
10 *Verbal*, *Vâchikâh*, and *Physical*, *Kâyikascha*. Of these the *Mânasa* or mental is in the form of a (mental) resolution that 'it has become mine.' "The *Vâchika* or verbal is an objective¹ recognition of the thing (as one's own), with the utterance of the words "this has become mine." The *Kâyika* or physical is of many sorts *viz.* by actual receipt or by touching (the subject matter) &c. In
15 this respect a rule has been laid down : "A deer-hide should be given by (means of touching) the tail, a cow by the tail, an elephant by the trunk ; by the hair, should similarly, a horse be given and a maid by the head." *Âswalâyana* also says.—"The consent of sentient beings should be obtained ; non-sentient beings and a maid should be touched."

There, in the case of gold (*i. e.* money), as physical acceptance becomes complete only after the offering of the water,² clothes &c. all the three modes of acceptance are observed. In the case of land etc., however, a (complete) physical acceptance being impossible without the enjoyment of profits, the acceptance should be by possession (for) howsoever short a time (it may be;) otherwise a gift, or a sale does not become complete. Thus a title becomes weak if it is unaccompanied by (actual) physical acceptance in the form of the enjoyment of profits, because, there such a title
30 *i. e.* one with possession is wanting. This,³ however, would be

1. सविकल्पक is the same as सविशेषणक having reference to a particular condition or object. Note the ordinary process in daily offerings. *e. g.* (1) अग्ने स्वाहा (2) अग्नय इदं, (3) न मम Thus it typifies the essentials of a donation *viz.* स्वस्त्रवनिवृत्ति and परस्त्वपासि cf. *Donatis* of the Roman Law and its essentials.

2. As distinguished from the land &c. in which case acceptance is not complete until profits are gathered in.

3. For an exposition of this passage and its context see the Bâlambhattî Sk. p. 45 ll. 4-6.

where the priority of time between the two is not known. When, however, the priority of time is known, a prior title alone will have force even if it is wanting in (the necessary) qualities.

Or again, it has been laid down¹ that evidence is of three kinds viz. writing, witnesses and possession; it may be asked, where all these exist together which of them would prevail and where? So the answer that would naturally suggest itself is this: "Title is superior to possession, excepting where it (*i. e.* possession) has descended down from a line of ancestors. In a title also there would be no force if there is no possession even for a short time." The meaning is this. In the case of the first acquirer, title established by witnesses is even stronger than possession, unless there is a possession which had come down from a (successive) line of ancestors. Such possession moreover, coming down from a (successive) line of ancestors in the case of the fourth generation becomes stronger than a title established by a writing. While in the case of the intermediate generation, a title accompanied by possession even though short is superior to a title without possession. This very thing has been made clear by Nârada²: "The origin (of title) in the case of the first (acquirer) is gift, in the case of the intermediate (holders) possession with title, and in the case of possession which is long and continued, (such) possession is itself the sole origin." 27 (2).

Viramitrodaya.

Possession without a lawful origin (even though) extending over more than three generations is not evidence of title, but only such as has a lawful origin; so the Author says

Yâjñavalkya, Verse 27.

The possession which is other than that handed down in a line *i. e.* come to from the preceding lines of ancestors such as the father, and the three ancestors, even greater than that, and different but arising out of it is the *agamah*, 'origin of title' such as sale, acceptance of a gift &c. by reason of the derivation viz., *agachchhate*, 'comes' *i. e.* becomes one's own, by which, that. The preposition, *abhi* is used to secure the parts.

1. *i. e.* in verse 22 above p. 713 as means of evidence.
2. Cf. Kâtyâyana, Verse 322.

740 *Viramitrodaya and S'ulapâni—Possession for three generations.* [*Yâjñavalkya*
Verse 27.]

Indeed if thus a legal origin of title is necessary to be established, then for establishing one's own proprietary interest, a continuity of possession would be useless. (Anticipating this question) the Author says—In regard to property such as land, &c., even if a little, as compared with possession for three generations, i.e., for a short time even, possession does not exist, there even a legal origin of title has no force, i.e., will not be helpful in establishing the object at issue. Even if the existence of a legal origin of title be proved, by reason of the same not having been proved to have been pursued, for establishing it, it is necessary to establish continuity of possession. This is the meaning.

Although, a legal origin of title has not been pointed¹ separately as a distinct means of evidence, still, it should be noticed that it is included in 'inference', added to by the word *cha* 'and'.

15 For three generations, i.e., possession enjoyed for three generations even if without (the establishment of) a legal origin, is still sufficient to establish the point at issue. So it will be stated further on. (27).

S'ulapâni.

Yâjñavalkya, Verse 27.

20 In the case of land &c. a legal origin of title handed down from past generations is stronger than possession. Therefore, possession transmitted through generations is stronger than title. So Brhaspati:² "A witness prevails over inference; a writing prevails over witnesses; undisturbed possession for three generations is stronger than both these".
25 Vyâsa mentions possession by three generations: "That which was held in possession by the great-grandfather; and also by his son after him; and after these two, by his father also, the possession of such a one is for three generations". Brhaspati:³ "Should even if the father, grandfather, and the great-grand-father of a man be alive, possession of
30 the (possession of the) three during their joint lives together is to be known as possession for one generation".

Title also becomes powerful, when possession even for a short time does not exist. So Nârada:⁴ "Though a document be in existence, and witnesses be living, particularly in regard to immovables, that which has not been held in possession is not permanent." (27).

1. i.e. in Verse 22 above.
3. Ch. IX. 23-24.

2. Ch. IX. 32.
4. Ch. I. 77.

By the text¹ “ *Passyataḥ abruvataḥ* etc.” [while (he) sees does not object etc.], it has been laid down that after twenty years in the case of land and ten years in the case of money there would not be a recovery of profits. Thinking that in such a case it may be supposed that as with the recovery of profits so there would not even be the recovery of fine, the Author proceeds to expound the law as to fines by considering the generation (of the occupiers) as well as the means of proof. So the Author says :—

5

Yājñavalkya, Verse 28.

He who made the acquisition of a title if sued should prove it, (but) not his son, nor his (i. e. son's) son ; (for) in their case possession has more force.

10

Mitākṣharā :—*Yena, by him, i. e. the person by whom of land etc. the acquisition of a title, Āgamah, was made, kṛtah, that man if challenged in a suit, abhiyuktah, as to whence he acquired the land etc. should prove, uddharet, i.e. establish, it, tam, i.e. the title, as e. g. through gift etc., by means of a writing and other means of proof.* By this also it amounts to be laid down that the first acquirer is liable to be fined if he does not make out his title.

15

His son, tatsutah, i. e. the second, if sued need not prove title ; but uninterrupted possession without protest and with notice. By this it has also been proved that there would be no fine to the second if he does not prove title, but if he does not prove a particular manner of possession. *His son, tatsutah, i. e. the third, need not prove either title or any particular manner of possession, but simply possession handed down in a (successive) line (of ancestors).* By this also it has been established that there would be fine for the third if he did not prove possession handed down in a line, and not if he does not prove title or a particular manner of possession. *In their case, tatra, i. e. in the case of the second and the third, possession, bhuktih, alone has more force, garīyasī.*

20

25

30

There also, the distinction to be noticed is, that in the case of the second it has force, while in the case of the third, there is greater force. The loss of the thing takes place equally in all the three, that

1. Verse II. 24 p. 41, ll. 36-37 of Eng. Tr. p. above.

742 Viramitrodaya, S'ulapani—When is mere possession good title? [*Yājñavalkya*
Verse 28.]

is, the purport is that if title is not proved the distinction has a reference to the fine only. Hârita also has said—"He, by whom an acquisition has been made, is liable to punishment if he does not prove it, and not his son or his (*i. e.* son's) son ; but even these lose
5. the thing possessed." 28.

Viramitrodaya

At times, even elsewhere also, mere possession is proof (of title); so the Author says

Yājñavalkaya, Verse 28.

10 The person who made the acquisition of title, such as by purchase &c., such a one when challenged in a judicial proceeding, *i.e.*, asked to establish his title, *tam ḗgamam*, 'such origin of title', *uddharet*, 'he should prove', *i.e.*, establish by evidence.

15 *Tasya*, 'of him', *i.e.*, of the one who acquired the title, son, or also the son of the son of him who acquired the title, need not establish the origin of the title acquired by the grand-father.

Tatra, 'in their case', *i.e.*, in the case of his son and the succeeding generations, *bhuktih*, 'possession', *garīyasi*, 'has more force', *i.e.*, irrespective of any other, is sufficient to establish the claim.

20 The word *wā*, 'or', is used to show indifference ; by that are included the great-grandson, &c. In *Tatra*, 'in that case', the Locative is used as having the force of the Possessive case. By the use of the word *tu*, 'however', is excluded possession ; even in that case also, the enjoyment being necessary to be established. (28).

S'ulapani.

Yājñavalkya, Verse 28.

One by whom witnesses, documents &c, have been indicated in writing in the case of (disputes regarding) land &c., such a one should expose the falsity of witnesses, documents &c. relied upon by the person complained against passed by another. His son and grandson, however, need not try to prove. In their case, possession itself will expose the falsity. It is not correct to explain *uddharet* 'should prove' as *darsayet* 'should point out.' In that way in the case of the son and the rest, when mere possession being proof of the rule 'that possession for three generations is proof', may not hold. As says Br̥haspati¹: "The person who has

1. See Ch. IX. 25.

taken possession should establish his possession, as well as the origin of his title, in the Court; his son, possession alone; and in the case of grandsons &c. nothing whatsoever". The meaning is, that by regard to the rule "that pure possession without interruption in the case of grandsons" by grandsons, the origin of title or of possession need not be proved. The origin of title and the possession, however must be pointed out. (28). 5

* PAGE 24.

By the (qualifying) text¹ "excepting where it has come down from a line of ancestors" it has been laid down that possession may be (accepted as) evidence when it extends beyond the memory of man and in which case it is independent of the knowledge of title. 10 The Author mentions an exception to this

Yājñavalkya, Verse 29.

If a person happen to die while a suit was filed against him his (legal) heir should prove it. In such a case 15 possession is no evidence (i.e. of ownership) if it is not proved to be accompanied with title.

Mitākṣharā :—When, however, a trespasser etc., abhiyuktah, while a suit had been filed against him, and before the suit was decided, paretah, happen to die i.e. happen to depart to the next world, then his heir, tasya rikthī e.g. sons etc., tam uddharet, should prove it i.e. the title; since in such a case, tatra i.e. in that suit, bhuktih, possession, without title, even though established by witnesses etc., is no evidence. Because by reason of a suit against the last holder, possession ceased (to have any value as evidence). It 20 has also been said by Nārada²: "Of the litigant who has died while a suit was filed against him, the son should prove the title, (since) the point (at issue) will not be established by (mere) possession." 25 29.

Viramitrodaya.

Here, in this connection, the Author mentions an exception 30

Yājñavalkya, Verse 29.

Since, in such a place, agamena vinā kṛtā, 'held without title', i.e., unaccompanied, bhuktir na kāraṇam, 'possession is no evidence', i.e., for establishing the point at issue.

1. Yājñavalkya II. 27 (1) see p. 733 above.

2. Ch. I. 93.

Here, moreover, possession is evidence (of ownership) if it has the five characteristics,¹ viz. : “ If it is with a legal origin of title, long-continued, without any gap, without protest from another, and in the presence² of the defendant.” Thus, by the text,³ ‘ Title is superior etc.’, its being coupled with a legal origin of title, by the text,⁴ ‘ for twenty years, etc.’, its long-continuousness and uninterruptedness, also by the text,⁵ ‘ without protest, etc.’, its being without a protest from another, and by the text,⁶ ‘ while looking on, etc.’, the near presence of the defendant, has been pointed out.

10 In some places, it has been stated that in the case of possession for three generations, accompaniment by a title is not required (to be established)—there it is doubtful, because without the origin of a legal title, the acceptance of (mere) possession (as sufficient), would be in conflict with the Smṛtis. For, says, Nārada⁷: “ He who enjoys without a title for ever so many hundred years, the ruler of the land should inflict on that sinful man, the punishment ordained for a thief ”, also⁸: “ By (establishing) a clear title, possession obtains an evidentiary value. Possession without a title which is not clear does certainly not make for (any) evidence (of ownership)”.

20 Here, by the use of the word *eva*, ‘certainly’, and also by a re-interation of what was established once, it may be said that in all cases possession is evidence of title only when it is accompanied by a legal origin of title. Not so. The text of Nārada has application only when an absolute absence of a legal origin is positively determined.
 25 And thus, possession for three generations or the like, will have evidentiary value even when there is a doubt about the (origin of) title. Intending this very thing, the same⁹ writer says: “ Even though unlawfully, when possession has been held successively, by the father and the three prior ancestors, that property cannot be taken away from him, because it has descended through three (successive) generations in order.” “ That which even without a title has been enjoyed before by three generations, that having been handed down for three generations cannot be disturbed.”

30 Vyāsa also :—“That which is absolutely without a title and as such has been enjoyed by three preceding ancestors, such a thing having

1. Aparārka assigns this text to Vyāsa, while the Smṛtichandrikā to Pitāmaha.

2. i. e. with notice to him.	3. Yājñ. II. 27 (1).
4. Yājñavalkya II. 24—2nd quarter.	
5. and 6. ” ” ” 1st quarter.	
7. Ch. I. 87. 8. Ch. I. 85.	9. Ch. I. 91.

been handed down in succession for three generations, cannot be disturbed. What was held in possession by the great-grand-father, and by his son after him, and after these two by the father also, the possession of his, is possession for three generations. For twenty years having been enjoyed by the owner without disturbance, such possession of land is as far as one generation, double that is for two generations, and for three generations is treble ; in such a case origin of title is not necessary.”

Thus, moreover it has been established that possession for twenty years is evidence only when there is certainty of a legal title, the proof of which it contemplates.

5

10

Indeed even thus, in the text¹ : commencing with ‘while looking on and not protesting’ and its theory, and in the text²:

An objection. “ Whose possession has been continuous, and has never been interrupted for thirty years, from him, that should not be disturbed.” The contradiction between these is apparent there itself. By stating that a thirty years’ possession has evidentiary value, in effect the evidentiary value of twenty years’ possession is discarded. The answer is: No. The text ‘While looking on and not protesting’ has application where the possession is

15

The answer. without protest, while in the text of Brhaspati by the use of the word ‘not uncontinuous’ possession characterised by quarrel, beating and like other interruptions, even possession with protest also is deemed to have evidentiary value.

20

And thus as the result of all the texts, and a conflict by regard to (the fact of) a difference of subjects, the capacity for possession for ten years and the like either as creating a title for ownership, or to serve as its evidentiary value, has been removed. Not the first, like acceptance (of a gift) possession not having the force to be regarded as a source indicative of proprietorship ; nor the last, as generally in a possession without a title there is a vitiation.

25

30

Oh ! indeed ! Then direct a similar view to possession for three generations ! If it be on the strength of an express text, then in such a case, the decision would be by regard to the principles of a fraudulent action. Or if a text laying down the evidentiary value of a possession for three generations is alone the basis for its being accepted as the means of origin of ownership, then it is similar to the one under consideration, and in this way if it be suggested that this possession for six months even, would by a parity of reasoning, be regarded as evidence

35

1. Yājñ. II. 24.

2. Brhaspati Ch. IX. 7.

of ownership, the answer is, no. For a subject, covered by an express text, there is no scope for a maxim. This is the point. (29).

S'ulapāṇi.

Yājñavalkya Verse 29.

5 If the person complained against be dead without proving his title, then his son and the like should establish the title. So says Nārada¹: "If a litigant dies during a law suit of this sort which has been commenced, and not decided, the point must be established by his son. Possession (of the father) will not be sufficient".

10 Possession for three generations with a title has evidentiary value. So says Kātyāyana²: "Land which has been enjoyed in possession for three generations in due course, in such a case that land will be retained by the fourth even in the absence of a document" The same Author³ explains the expression *yathā vidhi* 'in due course', thus: "With a legal origin of title, long-continued, without a gap, without interruption by another, and in the presence of the opponent. Thus of five characteristics is possession intended." "After⁴ establishing a clear title, possession obtains an evidentiary value. Possession without a title, or with a title which is not clear, does not make for (any) evidence (of ownership)". (29).

20 It has been established that where a suit remains undecided and a litigant dies, the (proceeding of the) suit does not stop (there). In some cases, however, where a suit is decided or a litigant is living, a suit is re-tried, and in some cases it is not re-tried ; for a determination of the rule (applicable) in these cases, the Author
25 mentions the comparative superiority and inferiority of those who decide disputes

Yājñavalkya, Verse 30.

In matters of legal proceedings between men, officers appointed by the King, the Pūgas, the S'renis, and the Kulas,
30 (each of these) preceding should be considered to be in the superior order of priority (specified here).

1. Oh. I. 93.

2. Verse 327.

3. See note 1 on p. 744 above. Here

S'ulapāṇi assigns this text to Kātyāyana.

4. Nārada I. 85.

Mitākṣharā :—Nr̥peṇa, by the king, i.e. by the ruler; adhikṛtāḥ, appointed, for trying and deciding legal proceedings, referred to in the text¹: “A king should select as his Councillors, &c.” and pugāḥ, corporations, i.e. of men (though) belonging to different castes and (following) different occupations, but residents of the same place e.g. of a city, town &c.; sreṇayah, trade-guilds of persons earning their livelihood by the same (kind of) labour whether belonging to different castes or to the same caste e.g. of the dealers in the cattle, beetle, the weaver and the currier; kulāni, groups of caste-people, relatives, and cognates.

5

10

Of these four i.e. officers appointed by the King &c. pūrvam pūrvam, in the order of priority, whoever has been mentioned first, those in order, jñeyam, should be considered i.e. regarded, as balavat, more powerful i.e. superior, nr̥ṇām, between men, i.e. men engaged in litigation; vyawahārawidhau, in the matter of legal proceedings, i.e. in the matter of trying and deciding a dispute.

15

This is the meaning intended: In the case of a suit decided by officers appointed by the king, there would be no fresh hearing before Pūgas &c. on the ground of a wrong (exercise of) judgment, even if the defeated party is dissatisfied. Similarly, even in the (case of the) suit decided by Pūga there would be no appeal to S'renis &c. So on a decision by the S'reṇi there can be no resort to the Kula. But from the decision of the Kula one may go to the S'reṇi &c.; from the decision of the S'reṇi to the Pūga, and from the judgment of the Pūga to the officers appointed by the King.

20

Nārada², however, has said that there would be an appeal to the king even from a decision of the officers appointed by the king “Kulās, S'renis, Pūgās,³ an officer appointed (by the king), and the king (himself) are invested with the power of deciding law suits; and of these, each succeeding one is superior to the one preceding him in order.”

25

In such a case, moreover, where a party appeals to the king, if in a trial with a wager before the king and his councillors together

1. See Yājñ. II. 2. p. 2.

2. Introduction Verse 7.

3. Ganas (V. L.)

with the officers before whom it was first tried, the party complaining of impartiality is defeated, he should be fined. But if he succeeds, then the officers appointed as judges should be fined. (30.)

S'ulapāṇi

Yājñavalkya, Verse 30.

5

Pūgah, 'An association formed e.g. of grocers and the like is called *Pūga*', thus stated by Kātyāyana¹; and the collection of grocers and others of different castes, is Śrenī; an assemblage of those of the same caste is a *Kula*, other than that. Of these when authorised by the king, 10 in the matter of a decision of a dispute, the one prior is more authoritative than the one succeeding. This in regard to a rehearing has greater force. e. g. what has been decided by the *Pūga*, must not be interfered with by a Śrenī. This is the meaning.

By these should be decided excepting cases involving heinous 15 offences and the like. So says Brhaspati²: "Those groups such as the *Kula*, Śrenī, *Gānas* and the like as have been duly appointed by the king, should decide cases of disputants excepting those relating to the adjudication of heinous offences." (30).

It has been said that a suit decided by an inferior tribunal 20 may be retried, and that decided by the superior is not reopened. Now the Author mentions cases where even a suit decided by the superior tribunal is reopened

Yājñavalkya, Verse 31.

Transactions brought about by force or fraud should 25 be upset, so also those entered into by women, at night, in the interior of the house, outside, or with the enemies.

Mitāksharā :—Balēna, by force, i. e. under compulsion ; upādhinā, by fraud, such as threats etc.; 30 * Page 25. vinirvṛttān, brought about, i. e. produced ; vyawahārānniwartayet, transactions should be upset. Similarly stribhir, by women ; naktam, at night, even if by others than women ; antarāgāre, in the interior apartment of the house ; bahir, outside the village ; s'atrubhīscha kṛtān, as

1. Verse 679.

2. Ch. XI. 28.

also those transactions entered into with the enemies, should be reopened. This is the construction. (31.)

S'ulapāni.

Yājñavalkya, Verse 31.

By force, or by fraud brought about, as also that made by women, at night, or in the inner apartment of a house, or those entered into outside the town, the transactions such as of sale, gift, and the like, as also entered into with the enemy, one should avoid (31).

A transaction entered into by the intoxicated, the insane etc., will not be upheld

5

10

Yājñavalkya, Verse 32.

A transaction¹ entered into by a person (who is) intoxicated, or insane, or afflicted with disease, by one in distress, or by a minor, or one frightened, or the like, will not be upheld ; as also that entered into by one who has no connection. 15

Mitaksharā :—Moreover, mattah, *intoxicated*, by some intoxicant, unmattah², *insane*, affected by insanity caused by either of the five causes viz. (disorder, arising) from Vāta³ (wind), Pitta (bile), S'leshmā (phlegmatic humor), or a combination of these, or by an evil demon, or by (the influence of) a plant. Ārtah, *afflicted*, with a disease etc.; vyasanam, *distress*, is the pain caused by the separation from the loved and acquisition of the undesired ; and a vyasanī, *distressed*, is one who is affected by it; bālah, *a minor*, incapacitated for (entering into) any transaction ; bhītah, 20

25

1. A व्यवहार may better be rendered as "a transaction" in this context. The general conditions in this and the last verse apply as well to suits as to other transactions.

2. An Unmāda has been thus defined :—“मद्यन्त्युद्धता दोषा यस्मादुन्मादमाश्रिताः । मानसेऽयमतो व्याधिरुन्माद इति कीर्तिः ।” Śūśruta.

3. Recognised by the Aryan Medical System as the three principal humors of the human body, every disorder of the body or of the mind being traceable to a disorder of one or more of these or of all the three combined, in which case it is called a Sannipātah (सन्निपातः).

frightened, by the enemies. By the use of the term **A'di**, or the like, is also indicated one who is inimical to the city¹ or to the nation. As **Manu**² has said :—“ Men conversant with law and religion have laid down that a suit which is (instituted by one who is) opposed to the city or the nation, or a suit decided by the king is unacceptable as a plaint.”

By these **yojitaḥ**, entered into, brought about ; **vyawahāra** na siddhyati, a transaction will not be upheld. Also a transaction entered into by one having no connection, or by one who was not appointed as an agent, will not succeed. This is the construction.

As to what, however, has been said *viz.*—“ A suit will not lie between a preceptor and a pupil, a father and a son, between the husband and the wife, or between a master and a servant, even if they are at conflict with each other ” even that is not to be taken as amounting to (lay down) an absolute exclusion of a suit between a preceptor and a pupil and such others, as a suit has been ordained (to lie) even between them. For **Gautama**³ has said : “ A pupil shall not be punished corporally. If (this course is) impossible, (he may be corrected) either with a thin rope or a thin cane. If (the preceptor) strikes (the pupil) with any other (instrument) he shall be punished by the king.” As **Manu**⁴ also has said “ In no case should the punishment be upon the head.” When (however) the preceptor under the excitement of anger, while punishing, strikes on the head and if the pupil (who was) thus injured in a way, which is a violation of the (laws of) **Smṛti** and usage, complains to the king, then a cause of action (for a trial) does certainly arise &c.

Similarly, under the text⁵ “ Land which was acquired by the grandfather &c.” the ownership of father and son being equal over land &c., if the father destroys by means of sale &c. (the title to) the land &c. which was acquired by the grandfather, and if the son resorts to an officer of justice, then there would certainly arise a suit even between a father and a son. Likewise, under the text⁶

1. <i>i. e.</i> opposed to the municipal, local or general interests.	3. Ch. II. 48–50.
2. Not found in Manu.	4. Ch. VIII. 301.
5. Yājñā. II. 121.	6. Yājñā. II. 147.

"A husband is not liable to make good the property of his wife, which was involuntarily taken by him in a famine, or for the performance of a (religious) duty, or during illness, or while under restraint" if the husband having spent away the wife's property (even) when there was no famine &c., does not pay back when asked for, even when possessing wealth, then a suit is certainly admissible even between a husband and a wife. So also the legal relations between a slave of maintenance and the master will¹ be mentioned later on, and having regard to the text of Nârada² viz. "Should any one of these, however, save his master when his life is in peril, he shall be released from slavery and shall take a son's share (of his master's wealth), even in the case of a slave by birth, who would avoid a suit against a master, if the slave is not manumitted and not given a son's share? Therefore the purport of the verse beginning with "Between the preceptor and the pupil" &c. is that as a dispute with a preceptor &c. will bear no good result in this world or the next, so the pupils and others should in the first place be induced away by the king in company with the assessors. If, however, the parties press hard, a suit has to be commenced even (when instituted) by the pupil &c.

5

10

15

20

Although the text of Nârada³ says that "Men conversant with law lay down that disputes between one and many, with women, and with servants are inadmissible as a suit;" still having regard to the text⁴: "He who robs the wealth of the villagers or transgresses any established usage &c." and the text⁵. "When one is assaulted by many &c." even a suit between one and many appears to be ordained, when they have a common cause of action. It should be noticed that a suit between one and many simultaneously will not lie when the many have different causes of action.

25

As for the expression 'with women', *Strinâm*, in their case also a suit certainly is allowed *e. g.* with the female of a cowherd, a vintner, and such others inasmuch as these women possess independence. The text is to be explained that a suit between women other than these—*i. e.* women of good family whose husbands

30

1. Yâjñâ II. 182.

2. V. 30.

3. II. 12.

4. Yâjñâ II. 187.

5. Yâjñâ, II. 221.

are living shall not be admissible on account of their dependence. *With servants*: This text also should be construed to mean that 'on account of the dependence of servants upon the masters', even in a dispute relating to his (servant's) own interests a suit should be allowed only with the master's sanction, and not otherwise. 32

Viramitrodaya.

It has been stated¹ that 'even while yet a suit has remained undecided, a party dies, the suit proceeds'. Now, even when a suit has been decided, and even when the party is living, sometimes the litigation 10 proceeds, and sometimes not, so the Author says

Yājñavalkya, Verses 30, 31, 32.

Nṛpenādhikṛtāḥ, 'appointed by the king', such as the Councillors; *Pugāḥ*, 'corporations' of men of different castes, such as the grocers &c. vide this text of Kātyāyana²: "The association such as of the grocers 15 and the like is called *Pūga*"; *S'rēṇīḥ*, an association of people of various castes but earning their livelihood by the same (kind of) work; *Kulam* groups of caste people, relations, and cognates. Among these, the one prior by regard to each succeeding, *nṛṇām*, 'of men', *vyawahāravidhau*, 'in the matter of legal proceedings'; *guru*, 'superior', more powerful.

20 Thus it is established that a transaction examined and decided by the Councillors, even if there be a suspicion of the decision, being faulty shall not be scrutinised by the *Pūgas* and others, while a dispute decided by the *Kula* may be revised by bodies as far as the *S'rēnis*.³ Similarly may be understood elsewhere.

25 By the use of the word *atha*, 'and', all being under the king's province, the superiority of the king above all has been pointed out. By the word *cha*, 'and also' has been added the conclusion that the Chief Judge is higher than the councillors.

So also Kātyāyana: "The Councillors are superior to the *Kulas*; 30 the Presiding Judge is superior to these; more than all is the king by whom the law has been settled. Of suits of the type of the highest, middling, and the lowest types, decided by tribunals of ascending degrees, the judgments have a (corresponding) superior effect". (30)

35 *Balam*, 'force' i. e., superior (force); *upadhiḥ*; 'fraud', such as threats, temptations etc; by these *vinirvṛttān*, 'brought about', i. e.

1. See Yājñ. II. 29 above.

2. Verse, 679.

3. i. e. the Councillors appointed by the king, the *Pugas*, and the *S'rēnis*

produced ; *stribhirnaktam*, ‘by women, at night’, even by others than women ; *antarāgāre*, ‘in the interior apartment of the house’, inside the house ; *bahih* ‘outside’ the village etc. in the forest etc. ; *śatrubhiścha kṛtān*, ‘as also those entered into with enemies’ ; such *vyawahārān*, ‘transactions’, *nivartayet*, ‘One should set aside’, i. e. should not accept as binding, in other words, should have re-considered.

The compound is to be solved as ‘entered into with women, at night, in the interior of the house, outside, or with the enemies’. The sense of the possessive is expressed in connection with the several words differently. That moreover has been already pointed out according to context. By the use of the word *tathā*, ‘so also’ are included those opposed to the interests of the town or the nation (31).

Matto, ‘intoxicated’ such as by some intoxicant etc.; *unmatto*, ‘insane’, affected with insanity brought about by an evil star; *ārto*, ‘afflicted’, oppressed by a disease; *vyasāñi*, ‘distressed’, troubled by sorrow &c.; *bālah*, ‘a minor’, one under sixteen years of age; *bhīto*, ‘frightened’, one who has taken to fright; by the use of the word *A'di*, ‘or the like’ are included those affected by lust, anger &c. By those, *yojitāh*, ‘entered into’, i.e., made *asambandhena*, ‘by one having no connection’, i. e., one not having the connection of a brother &c.; *aniyuktena* ‘by one not appointed’, *vyawahāro na sidhyati*, ‘a transaction will not be upheld’, i. e., will not bear fruit. The substance is that the same should be considered again.

By the use of the word *cha*, are included those made by *Dāsas* and the like. The word *eva*, ‘also’, is connected with the expression ‘will not be upheld’ and follows with it. Thereby it comes to be stated that although one made by the *Kula* &c., be at times upheld, one of this character can never be upheld. Here, the word *Vyawahāra* does not mean merely justice, but indicates donation, sale, mortgage and all similar ‘transactions.’ “A fraudulent¹ mortgage or sale, a fraudulent gift or acceptance, and (any transaction) where he detects fraud, he (the judge) shall declare null and void (166). What is given² by force, what is enjoyed by force, and what has been caused to be written by force, and all transactions done by force, are as not made ; so said Manu (169).”

Nārada³: “If a boy, or one who possesses no independence, transacts anything, it is declared an invalid transaction by persons acquainted with the law (39). That also which an independent person does while he has lost control over his actions, is declared an invalid

1. Manu Ch. VIII. I66, 169.

2. —See *Sri Sitaram Pandit vs. Sri Harihar Pandit*; 35 Bombay 169;

3. Ch. I. 39-41, 29-30. 26-27, 42.

transaction, on account of his want of independence (40). Those who are actuated by love, anger, or affected by illness, fear, or difficulty, and also those who are biased by attachment or hatred, are to be known as having lost control over their actions (41). A transaction entered into by (a slave) is declared as unauthorised, except where there is the master's authority; a slave is never his own master (29). Also a transaction entered into by a son without the father's authority, that also is declared to be invalid; a slave and a son are equal in that respect (30). The transactions of gift, mortgage, or sale of land, house, or a slave made by those who are not independent, do not reach completion, when not ratified. They say that transactions entered into by women are unauthorised when there is no adversity; especially the transaction of gift, mortgage, or sale of a house or land (26). These transactions are only regarded as valid if the husband sanctions them; or the son in the absence of the husband; or the king in the absence of the husband and the son (27). In the family whoever is the eldest or senior, and who has retained his control over the senses, a transaction entered into by him is regarded as a properly entered transaction, and not done by one not independent (42). For the sake of the family, if one enters into a transaction although himself under control, and whether in his own country or in a foreign country, that transaction, the senior should not disturb." 'Himself under control', such as a slave &c. One not independent will hereafter be described; so enough of prolixity (30, 31, 32).

S'ulapāṇi

25

Yājñavalkya, Verse 32.

By liquor or a like intoxicant, 'intoxicated' *mattah*; on account of windiness &c., one who has become 'insane,' *unmattah*; one affected by a disease; one addicted to gambling; one less than sixteen years of age. By the use of the word *ādi*, 'and the like,' are included those entered into by slaves, who are not independent, or by the aged and the like, and by strangers, not related, excepting those authorised by the father. A transaction, such as of a debt and the like, entered into by these, never becomes of force. (32).

* Page 26.

35

After mentioning suits which are liable to be reversed, the Author indicates the kind of property which may be restored

Yājñavalkya, Verse 33.

Lost wealth when (subsequently) recovered should be given by the king to the owner; if (however) he (the

claimant) do not identify it by (supplying) marks (of identification) he is liable to an equal (amount of) fine.

Mitāksharā :—*Pranashṭam, lost wealth*, such as gold &c., *what was recovered, adhigatam*, by the revenue or police officers &c., and brought over to the king, (that wealth) should be given by the king to the owner, if the owner identify it by (supplying) marks of identification such as the quality, quantity &c. If he do not identify, then he should be fined in an equal amount for setting up an untrue claim. This refutes the presumption of ownership which may arise on account of *adhigama* (finding) being recognised as one of the causes giving rise to ownership.¹

In this matter moreover, further² on the Author lays down the period of time, *viz*: “What was brought in by the Revenue Officers or the Officers of police as property lost and recovered, the owner may take away within a year; thereafter the king shall take it away.”
Manu³, moreover, has laid down three years as the period: “Property, the owner of which has disappeared, the king shall cause to be kept as a deposit for three years; within the period of three years the owner may claim it; thereafter the king shall take it.” There, it shall necessarily be preserved for three years.

If the owner comes within a year, the whole should be returned (to him). Where, however, he returns after more than a year, in that case, after deducting some portion as a preservation charge, the remainder should be made over to the owner. As has been said⁴: “Then the king bearing in mind the law among good men, may take one-sixth part of the property lost and afterwards recovered, or one-tenth, or at least one-twelfth.” In such a case in the first year the whole should be given. But in the second, after deducting a twelfth portion, in the third, a tenth, and a sixth in the fourth and in the following years, the remainder should be restored (to the owner), and a fourth of the Royal share should be given to the finder.

When, however, the owner does not turn up a fourth of the entire property should be given to the finder and the remainder may

1. See e. g. Gautama. X, 39.

2. Yājña. II. 173.

3. Ch. VIII, 30.

4. Manu. Ch. VIII, 33.

be taken by the king. So says Gautama¹ : " If lost property, the owner of which is not known, is recovered it should be announced to the king. The king should cause a proclamation to be made, and preserve it for one year. Afterwards one-fourth (goes) to the finder,
 5 (and) the remainder to the king." Here by the use of the word 'a year', the singular number is not stressed, vide the text²: " The king should cause it to be kept as a deposit for three years." And even the text²: " Thereafter the king shall take it" amounts only to a permission to dispose (it) of after three years if the owner does
 10 not turn up. Where, however, the owner appears after that (period), even if the property is disposed of, the king should deduct his due and pay (to the owner) an equivalent (amount). This is with reference to gold, &c. As regards cows, etc., the Author states (the law) further on (in the text³) : " The owner should pay (four) panas
 15 if the animal has an entire hoof, etc."

Viramitrodaya

It has been stated⁴ that 'the king should administer justice'; there, not only suits as described above alone should be investigated, but even where there is no defendant, by regard to the result being reached
 20 by means of the examination of witnesses, or regard being had to the investigation resulting in a penalty consequent upon a defeat, a resemblance of a judicial proceeding, in a case of deposit &c. where the right of ownership is under a doubt, and even in the form of the assertion that 'it is mine', and the exhibition of evidence in substantiation of it, in a similar manner; intending this, the Author mentions rules in regard to treasure-trove and the like by means of four verses.

Yājñavalkya, Verse 33.

A *nidhi*, or a treasure-trove is wealth buried before and kept permanently. That, moreover, is two-fold, differentiated as deposited
 30 by self or by one's father and the like, or as deposited by others. Of these, the first *pranaśṭham*, 'lost,' but afterwards *adhigatam*, 'recovered', by the owner or by an officer of the king or any other, *dhanam*, 'wealth,' in the form of the treasure-trove. *dhanine*, 'to the owner' i. e., to the one

1. X. 36-38 The proper reading is प्रनष्टमस्त्वामिकं अभिगम्य राजे प्रद्युयः । वित्याप्य राजा संवत्सरस्य &c. This is the reading in the original text of Gautama.

2. i. e. Manu VIII. 30.

3. Yājñ. II. 174,

4. Yājñ. II. 1, p. 631, l. 13,

declaring that 'this is my wealth', *nṛpeṇa deyam*, 'by the king should be given,' if 'by signs' *lingaiḥ i.e.*, by means of evidence, *taddhanam vibhāvayet* 'that wealth he should establish' *i.e.*, shculd prove as his own. *Na chet vibhāvayet*, 'if he does not establish' then a penalty equal to the amount in dispute, he incurs on account of his offence in telling a false-hood of that character. 5

S'ūlapāṇi.

Yājñavalkya, Verse 33.

Pranashṭam, 'lost wealth,' such as gold &c. when found by the king, identified by the owner (to be his) by marks such as the form, the number, and the like, should be given to him. On an incongruity, 10 however, he should be made to pay a fine, equal to the amount. (33).

After laying down the law regarding gold, &c., as to property lost and recovered on the roads or from the toll houses where it lay scattered, now the Author states the law regarding the recovery of gold, &c., which had long been burried in the land, and which last is 15 known as a *Nidhi* (or treasure-trove)

Yājñavalkya, Verses 34 and 35.

The king having found a treasure-trove should give half to the twice-born. But a learned Brāhmaṇa finding (a treasure-trove) may keep the whole, as he is the lord 20 of all. (34).

If a treasure-trove is found by any other, the king should give him¹ a sixth part. If (however) the information is not given (by the finder) and he is found out, the finder should be made to pay a fine. (35). 25

Mitākṣharā :—The king having found a treasure-trove as already defined, half should be given to the Acquisition of a Brāhmaṇas, and the remainder thrown into the treasure-trove. treasury. If, however, a Brāhmaṇa find treasure-trove and he be learned, *i.e.*, accomplished by learning and study, and well-behaved, then he should take the whole ; since he is the lord of the whole world. 30

1. The translation as given above is in accordance the Mitāksharā.

If, however, the treasure-trove is found, itareṇa, by any other, than either the king or a learned Brāhmaṇa as, e.g., by a Brāhmaṇa who is not learned, or by a Kshatriya or such another, the king should give a sixth of it to the finder and himself take the remainder of the treasure-trove. As says *Vasishtha*,¹ "A king

* Page 27. known should take it; he should give a sixth part to the finder." *Gautama*² also "Treasure-trove when found becomes the property of the king; not (however) that which is found by a learned Brāhmaṇa, even a non-Brāhmaṇa finder who announces (to the king) shall obtain one-sixth, so declare some."

The past-participle *anivedita* is (used) in the active voice; he who has not given information and who has been found out, i.e., who has been found out as not having given information even to the king. Whoever, having found a treasure-trove did not inform the king and was found out by the king, should be made to pay the entire treasure found, and also a fine according to (his) capacity.

If, however, the owner of the treasure-trove himself appears afterwards and establishes his ownership by specifying the amount of the rupees, etc., then the king should give him the treasure, (after) taking for himself a sixth or a twelfth part. As says *Manu*³— "From that man who shall truly say with respect to a treasure-trove, 'This belongs to me', the king may take one-sixth or one-twelfth part." The choice as to the (particular) portion is to be determined by reference to the class (to which the party belongs), the time (which had intervened), etc.

Viramitrodaya.

The Author mentions as to the second

Yāñjavalkya, Verses 34, 35.

30 *Rājā*, 'The king,' upon finding a treasure-trove the owner of which is not known, *ardham dwijebhyo dadyat*, 'should give half to the twice-born,' and (the other) half he should consign to the treasury. *Vidwān*, 'learned,' i. e. accomplished by learning and study of the *Vedas*, twice-

1. Ch. III. 18.

2. X. 43 45.

3. Ch. VIII. 35.

born i. e. a Brāhmaṇa, moreover, having found a treasure-trove, *aśeṣam*, ‘the whole’ i. e. the entire treasure, *swayam ādadyat*, ‘should himself take.’ *Sa*, ‘he,’ i. e. such a Brāhmaṇa, *yataḥ*, ‘as’, *sarvasya prabhuh*, ‘is the lord of all’ i. e. of the world.

That says Manu¹: “Whatever exists in this world is the property of a Brāhmaṇa; on account of the excellence of his origin the Brāhmaṇa is, indeed, entitled to it all. (100). The Brāhmaṇa eats his own food; wears but his own apparel, bestows but his own alms; other mortals subsist through the benevolence of the Brāhmaṇa (101).” (34).

Itare'na, ‘by any other’ i. e. by not a learned Brāhmaṇa, *nidhau labdhe*, ‘if the treasure-trove is found’, *rājā*, ‘the king’, *śaṣṭhāṁś'am āharet*, ‘a sixth part he should² take,’ from the treasure-trove. 10

The past participle in the *aniwedita* is (used) in the active sense. One who has not given information and who has been found as having taken the treasure-trove, should by the king be compelled to pay the treasure and also a fine according to capacity. 15

By the expression *dāpya eva*, ‘he must be made to pay,’ it has been indicated that he must not be allowed to take even a small portion of the find. The word *cha*, connects this with the last clause and also is intended to include the twelfth part. So says Manu³: “The man who makes truly an assertion ‘this belongs to me,’ from him, the king may take a sixth part or a twelfth part.” The twelfth part has a reference to one endowed with qualifications. In this connection Viṣṇu⁴: “A king, upon finding a treasure-trove, should give half to a Brāhmaṇa and the other half he should deposit in the treasury (36). A Brāhmaṇa finding hidden wealth should take it himself (37). A Kṣatriya should make over a fourth to the king, one-fourth to the Brāhmaṇa, and should take a half. (38). A Vaiśya should give a fourth part to the king, a half to the Brāhmaṇa, and should take one-fourth for oneself. (39). A Śudra, moreover, should devide the find into twelve parts, and should give five parts each to the king, and, to the Brāhmaṇa, and take two parts. (40). From one

1. Ch. I. 100, 101.

2. Note the difference between the Mitāksharā and the Viramitrodaya in the interpretation of the word आहरेत्. According to the Mitāksharā, after giving one sixth to the finder. The king should take the rest. According to V. M. the king should take one-sixth. Śūlapāni agrees with the Mitāksharā.

3. Ch. VIII. 36.

4. Ch. III. 36-41.

who has not reported the find and who has been found, the king should take the whole (41)." Thus the text of Vasiṣṭha¹ viz. "If he finds property (the owner of) which is not known, the king should take it up, and should give one-sixth portion to the finder", has a reference to a 5 Sudra, in pursuance of the text of Viṣṇu. (34, 35).

S'ūlapāni

Yājñavalkya, Verse 34.

The king having found an ownerless treasure-trove deposited a long time ago, should give a half to the Brāhmaṇas. A learned 10 Brāhmaṇa,² however, should take the whole; he need not give a portion to the king. The Authour states the reason: since of all kinds of wealth he is the master, as says Manu³: "Whatever exists in this world is the property of the Brāhmaṇa; other mortals subsist through the benevolence of the Brāhmaṇa." This also applies in the case of a deposit by others. 15 As says Bhāradwāja: "Upon finding a deposit laid by another, one should take it to the king; every treasure-trove must go to the king, of all except the Brāhmaṇa." (34).

S'ūlapāni

Yājñavalkya, Verse 35.

20 When a treasure-trove belonging to himself has been found by a Brāhmaṇa who is not learned, or by the Kshatriya and others, according to Nārada: "The king should take a sixth share;" and according to Manu and others, a small portion is to be taken according to the qualification of the finder. For a deposit not belonging to oneself, however, after 25 giving a sixth portion to the finder of the deposit, the remainder the king should take. As says Vasiṣṭha¹: "If one happens to find an ownerless deposit, the king shall take it up, after giving a sixth portion to the finder. If a Brāhmaṇa finds it, and he is one who carries on his own duties, then the king should not take." When ownerless wealth, as well as 30 wealth the owner of which was known, was not reported, but came to be known by the king, then that wealth as well as a fine, the taker of the treasure should be made to pay. So Nārada: "Even a Brāhmaṇa upon finding a treasure, should inform the king; what is given by him, he may enjoy; he would be a thief if he does not inform." (35).

1. Ch. III. 13.

2. i. e. who finds the treasurers.

3. Ch. I. 100.

The Author mentions (the rule) about property taken away by robbers

Yâjñavalkya, Verse 36

The king should pay the wealth taken away by the robbers (and recovered by him from them) to the people of his country; and if he do not pay, he incurs the sin of the robbed as well as of the robbers. 5

Mitâksharâ:—Chauraih r̥̤tam, *taken away by the robbers*, and conquered back from them. Jânapadâya, *to the inhabitants of his country*. Whosoever that wealth be, to him should it be given by the king; hi, if, i.e., since if, adadat, *he do not pay*, yasya, whoso, that robbed wealth may be, he (the king) incurs the sin, tasya, of him, i.e., of the robber. As says **Manu**,¹ “Property stolen by thieves must be restored by the king to (men of) all classes (*varna*); a king who uses such (property) for himself incurs the sin of a thief. If after recovering from the possession of the thieves he enjoys it himself then he incurs the sin of a thief.² If, however, he neglects the (recovery of) property stolen by thieves then he incurs the sin¹ of a citizen. If after trying to recover property stolen by the thief, he is not able to recover it, then in that case he should pay as much amount from his treasury. As says **Gautama**³: “Having recovered property stolen by thieves, he shall return it to the owner. Or (if the property is not recovered) he should pay (its value) out of his own treasury.” And also, **Krishnadwaipâyana** :—“If a king is unable to recover property stolen by thieves, that (amount) should be paid from his own treasury by the king who is (so) unable.” 20 25

Here ends the chapter on Special rules of Procedure.

1. Ch. VIII 40.

2. These expressions require an explanation. They supply a good illustration of the *terse style* (मिताक्षरा) of the Author: In the first expression by चौरस्य किल्बिषमाप्नोति, what is intended to convey to the reader is that he incurs the same responsibility and criminal liability as a thief does. While the expression जानपदस्य किल्बिषमाप्नोति ‘incurs the sin of a citizen’, means that he incurs the same responsibility which a citizen does by not assisting or neglecting the recovery of robbed property.

3. X. 46-47.

Viramitrodaya

In regard to property carried away by thieves, the Author states a special rule

Yājñavalkya, Verse 36.

What was taken by a thief, or property of that kind, after taking it back from the thief—and when that is not possible, even from his own treasury, *jānapaddya*, 'to the people of his country', i.e., to the inhabitants of his territory, *deyam*, 'should be given'.

By the use of the word *tu*, 'however', are discriminated the making over to others than the people of his country, and a deduction of a portion for himself according to law. *Hi*, 'and if', i.e., since, that property which was taken away by the thief if not given back to him to whom it belonged as owner, the king incurs the sin of the thief—i.e., the sin of a kind which is incurred by theft.

That says Manu:¹ "Property stolen by thieves must be restored by the king to (men of) all classes (*varṇas*) ; a king who uses such (property) for himself incurs the sin of a thief".

In the Mahābhārata also : "If a king is unable to recover property stolen by thieves, that (amount) should be paid from his own treasury by the king who is (so) unable". (36).

20 Here ends the Chapter on Rules of Procedure in the commentary on the Smṛti of Yājñavalkya

S'ūlapāṇi

Yājñavalkya, Verse 36.

What was taken away by the robber, should be restored by the king ; since, he to whom that wealth belonged, of him he acquires the sin. If he do not recover that property, he should give from his own treasury. As says Vishṇu:² "What was taken away by a thief, should be recovered and paid in entirety. If not recovered, from the treasury itself." (36).

30 Thus ends the Chapter on Judicial Procedure

1. Ch. VIII. 40.

2. Ch. III. 45.

Chapter III.

On Recovery of Debts.

After expounding the ‘Rules of Procedure’ in general and particular cases, the Author now expounds the Sevenfold division Chapter on ‘Recovery of Debts’ the first of the of the Chapter on eighteen titles of law, beginning with the text:¹ recovery of debts. “An eightieth part is the interest”, etc., and ending with the text:² “The pledge shall be (allowed to be) redeemed after double the principal has been received out of the produce.”

5

10

This title of “Recovery of Debts” has seven points (for consideration). (1) The *kind of debt* which should be paid, (2) the one which should not be paid, (3) by what person should be paid, i.e., by one holding a particular capacity, (4) at what particular *time* to be paid, (5) and in what way to be paid—in all, five points for the debtor; and for the creditor, two, viz., (6) the mode of advancing a loan as also, (7) the mode of recovering it. This, moreover, has been made clear by Nârada³: viz. “Which debt must be paid, and which may not be paid, by whom, where, and in what way to be paid, and the rules of advancing and of recovering (loans) are said to make up the (title) ‘Recovery of Debts’.”

15

20

Of these the Author states the rule regarding the advance (of a loan) by the creditor, as it is the first of all other points of inquiry).

Yâjñavalkya, Verse 37.

An eightieth part (of the principal) is the interest (allowed) every month when the debt is (secured) by a pledge. In other cases it may be two, three, four, or five per cent., respectively, according to the order and class (of the debtor).

25

1. Verse 37.

2. Verse 65.

3. Ch. I. 1.

Mitâksharâ :—Mâsi māsi, *every month*, i.e., month by month. Bandhaka is that which is deposited

* Page 28. as a security, i.e., pledge. That which is (accompanied) by a pledge is called
5 *sabandhaka*, a *transaction with a pledge*. In such a secured transaction, the interest on money advanced would be one-eightieth part (of the principal), according to law. *Anyathā*, in other cases, i.e.,
10 in a transaction without a pledge, *varṇānām*, of the classes, *kramena*, according to the order, i.e., of the Brāhmaṇas and others, *dwi-tri-*
15 *chatuh-panchakam*, two, three, four, or five, per cent is according to law. In the case of a *Brāhmaṇa* debtor two per cent., in that of a *Kṣatriya* three, in a *Vais'ya* four, and in a *S'udra* five, and (this) every month. Two, or three, or four, or five (make up the compound word) two-three-four-five. A hundred in which such an interest is given is "a hundred with two-three-four-five." As per the following rules of grammar viz. "The affixes, mentioned above², have also the sense of an interest, or a rent, or a profit, or a tax, or a bribe given thereby or in that,"³ "The affix *Kan* (कन्) comes⁴ after a numeral when it does not end with ति or शत्"⁵ and the rule to be observed here is the one stated in the Grammatical *Sūtra* I. 1-72 viz, "An injunction⁶ which is made with regard to a particular attribute, applies to words having that attribute at the end as well as to that attribute itself."⁷

1. Pāṇīpi 5-1-47. 2. i. e. Pāṇini V. 1-1-46.
 3. Pāṇini V. 1. 22. 4. e. g. in पञ्चकम् the कम् termination.

5. The word आहृत् (see V. I. 63) is to be read into the *Sûtra*, so that the whole *Sûtra* would read by adding, to the portion given above, the following *viz* :—“The sense of the affix being that taught hereafter upto V. I. 63.”

6. This i. e. the तदन्तविधि: (Pāṇini I. I. 72) is a rule of interpretation. When a rule is made with regard to a particular attribute or letter, it also means words having those attributes or letters at their end. Thus under the rule अचो यत् (III. I. 97.)—“The affix यत् comes after a root that ends in a vowel” roots ending in vowels as well as roots consisting of a single vowel are included.

7. For a clear understanding of the bearing of these rules upon the text, mark the following observations: The compound word द्विनिचतुःपञ्चन्

“Interest upon interest is (called) compound interest; it is (called) *Kālikā* when it is (payable) per month; it is *Kārītā* when it is fixed according to the wish (of the parties); it is *Kāyikā* when it is in the form of bodily labour” (the stipulation that) ‘the interest in this will be taken every month’ is (an instance of) a *Kālikā*. This very (species of) interest becomes *Kāyikā* when it is receivable per day and the period is divided by the calculation of days. Moreover, Nārada¹ after stating that “In the *Sāstras* interest is declared fourfold viz. *Kāyikā*, *Kālikā* (periodical interest), another called *Kārikā* (stipulated interest), as also the compound interest (*chakra vṛiddhiḥ*)” has said:—“Interest² at the rate of one *Pāṇa* or quarter of a *Pāṇi* payable constantly³ and without detriment to the physical health is denoted *Kāyikā* interest. That which runs by the month is termed *Kālikā* (periodical) interest. That interest is *Kārītā* (stipulated) interest which has been promised by the debtor himself. Interest upon interest is called *Chakravrddih* (compound interest).”

S'ūlapāṇi

The Author states the rules of interest according to law

Yājñavalkya, Verse 37.

Upon a security being taken when a hundred *pānas* are advanced as a loan, an eightieth part i.e. one and a quarter *pāna* every month has been explained and solved as द्वौ वा त्रयो वा &c. (Sk. page 28 lines 4-5). For this the authority is तदस्मिन् etc. (V. I. 47.) under which rule the affix is added to a word in the first case (तद्) in construction. The sense of the affix is that of a locative (अस्मिन्). Then the कन् ending in द्विविचतुःपञ्चकं is explained by the rule संख्यायाः &c. (V. I. 22.). And lastly by the तदन्तविधिः the application of the first rule is extended to all the members of the compound, and thus is brought out the meaning of this compound word as explained in line 6 on page 28.

1. Ch. I. 102-104.

2. स्वस्वपणपादादिका क्रमात् is the reading in Dr. Jolly's edition.

3. शश्त्र—(*S'as'vat*—) has the force of constant repetition. Here it may even be rendered as “every day” (see line 9.) कायाविरोधिनी—(*Kāyāvirodhinī*) The translation adopted here is in accordance with the gloss of Bālambhaṭṭi (see Bālam. Sk. p. 54 I. 14--15) Br̥haspati & Vyāsa (see Sacred Books of the East &c. XXXIII p. 67 note).

Dr. Jolly, however, translates it as—“Without diminishing the principal”, and the translation appears to be based on the following gloss by Asahāya, “अय कायोच्यते ।द्रव्यपिण्डो द्रव्यकायः तस्याविरोधिनी मूलद्रव्यकायस्याविनाशिनी । ”

becomes the interest. *Anyathā*, 'otherwise' when the money is advanced without security, two, three, and four *paṇas* shall be the interest payable by the Brāhmaṇa and others in the respective order.

5 Vyāsa states a special rule: "In the case of a loan with security monthly interest is declared to be the eightieth part; a sixtieth part when there is a surety; and two per¹ hundred, on a loan without any security."

Brhaspati² mentions the kinds of interest: "The *Káyiká*, (by bodily labour), the *Kálíká*, (periodical interest), and next, the wheel interest—*Chakra vrddhi*—(compound interest), the *Káritā* (or stipulated interest), the hair interest—the—*Sikhā*—and the interest by enjoyment *Bhoga*." *Káyiká* 'by bodily labour', e.g. by milking and driving cattle, and such other labour; *Kálíká*, 'periodical' e. g. every month. Interest upon interest is wheel or compound interest; that which was stipulated by the debtor himself is *Káritā*; the hair-interest is that which is taken every day; *Bhoga*, 'by enjoyment' such as the rent of a house, profit, or the fruit of crops &c. Brhaspati³: "Hair interest, bodily interest, and interest by enjoyment shall be taken by the creditor so long as the principal remains unpaid." (37).

20 The Author mentions other varieties of interest by reference to particular (classes of) debtors

Yājñavalkya, Verse 38 (1.)

Persons (usually) travelling through forests should pay ten per cent, and those who travel by sea twenty per cent.

25 Mitāksharā :—*Kāntāra* means a forest; those who go there, are *kāntāragāḥ*, persons travelling through forests. Those who borrow money by interest and enter dense forests which involves⁴ danger to life and property should pay ten per cent and those, who go to the sea, *samudragāḥ*, twenty per cent., also per month.

30 The meaning is this: The creditor should take ten per cent from those who go to the sea, as there is a danger of the loss of the principal also.

1. i.e. fiftieth part. 2. Ch. XI. 5, 6, 7. 3. Ch. XI. 11.

1. Lit. which creates an apprehension about the destruction of life and property.

Now the Author describes stipulated (Kâritâ) interest

Yâjñavalkya, Verse 38 (2)

10

Or all should pay what they had agreed to among all classes.

Mitâksharâ :—*Sarve vâ, or all, Brâhmaṇas and other debtors whether secured or unsecured, swakrtâm, what they had agreed to i. e., promised by them, vrddhim, sarvâsu jâtishu 15 dadyuh, interest among all classes, should pay.* Sometimes interest is payable even when not stipulated for. As says Nârada¹: “No interest shall ever be charged on friendly loans, unless there is an agreement to that effect. Even if there be no agreement, interest accrues on such loans after the lapse of half a year.” 20

For one, however, who goes to another country after taking a loan for use, Kâtyâyana² has laid down a rule thus :—“If one after obtaining a loan for use without returning it goes to foreign lands, that loan of his will be charged with interest after the lapse of 25 a year.” For one, moreover, who after obtaining a loan for use and without returning it, even when he was asked, goes to a foreign region, the same Sage³ has laid down the rule *viz.* “If, one goes out to a foreign region without returning a loan which he had obtained, and which was demanded back, that 30 loan becomes chargeable with interest after the lapse of three months.”

He also, who while remaining in one’s own country, does not return a loan for use when asked for, should be made to pay interest by the king from the date of the demand. As has been said⁴ “He, 35 however, who while remaining in one’s own land, does not return a loan for use when asked for, should be made to pay interest from that time, even though it was not stipulated and he be unwilling.”

1. Ch. I. 108.

2. Verse, 502.

3. Verse, 503.

4. By Kâtyâyana, Verse 504.

Nârada¹ has laid down an exception to the unstipulated interest, viz: "The price of a commodity, wages², a deposit, a fine which had been fixed, a gift without consideration, a gambling debt, none of these bear interest unless specially provided for."

5 Avivakṣitâḥ, unless specially provided for, i.e. unless stipulated for.

S'ūlapāṇi.

Yājñavalkya, Verse 38.

By a mountainous road or by the sea when one goes out for trade, these when there is no security, should pay ten *panas* and twenty *panas* respectively. On account of the contingency of the loss of the principal itself is the payment of larger interest.

The Author mentions another alternative to the rule stated in the text³: "In the order of the Varnas, two, three &c." *dadyurweti*, 'or should pay &c.'

20

Yājñavalkya, Verse 38A.

Interest upon interest is compound interest; interest payable every month is periodical interest (*Kâlikâ*). When stipulated by himself, it is stipulated interest (*Kârikâ*). The (*Kâyikâ*) is by bodily labour.

25 This is explained by the statement itself. In some books this verse is not stated.

* Page 29.

Now the Author mentions special kinds of interest by reference to particular things. The interest on the females of beasts is their progeny itself.

25 Yājñavalkya, Verse 39 (first quarter.)

In the case of female beasts the interest is their progeny itself.

Mitâksharâ:—Of the females of beasts, *santatireva*, *progeny itself*, is the interest. Such a transaction would be possible 30 in the case of one who is unable to maintain the female beasts and who wishes them to be well-fed and to bear progeny. The creditor will have the milk and labour.

1. Introd. II. 36.

2. भूति, is a better and correct reading. The reading in the print viz. भृति is not correct.

3. Yājñavalkya II. 37.

When something is given as a loan and the loan has remained over for a long time even without recovering any interest, what is the maximum limit for the accumulation of interest in several kinds of properties? (Anticipating this question) the Author proceeds :—

Yâjñavalkya, Verse 39 (second quarter.)

5

The utmost limit for (the accumulation of) interest is eight-fold in the case of a fluid, and fourfold, threefold, and twofold in the case of cloth, grain and gold respectively (of the principal loan advanced).

Mitâksharâ :—Rasasya, of a fluid, i.e., in the case of oil, ghee, etc., upon which no interest has been Accumulation in received, and the loan has remained standing for the case of fluids etc. a long time, the interest as agreed to by the parties would be accummulating—such accumulation would be ashtagunâ, eightfold, parâ, utmost limit, i.e., cannot accumulate beyond that. Similarly of cloth, grain, and gold, wastradhânya-hiranyânâm, would respectively be fourfold, threefold, and twofold the utmost accumulation.

10

15

Vasishtha,¹ however, has mentioned a threefold increase in the case of fluids—“Gold (taking) double (its value on repayment and) grain trebling (the original price). (The case of) fluids² has been explained by (the rule regarding) grain, as well as (the case of) flowers, roots and fruit. In the case of these three things which are sold by weight the increase will be eightfold.”

20

Manu³ on the other hand, in the case of grain and also flowers, roots and fruits has mentioned a fivefold increase. “On grain, fruit, wool or hair (and) beasts of burden it does not increase more than five times (the original quantity). S'adah, grain, the produce of the field, such as flowers, roots, fruits, etc.; lavah, wool or hair, the wool of a goat; the hair of the Chamari Cow, etc; wâhyah, beast of burden, the ox, horse, etc., i.e., the accumulation of interest in the case of grain, fruit, wool, or hair and beasts of

25

30

1. Oh. II. 44-47.

2. Dr. Buhler translates रसाः (*Rasâḥ*) as flourishing substances.

3. Oh. VIII. 151,

burden does not extend beyond a fivefold (of the principal). There too, the rule should be applied after considering the capacity of the debtor as well as the state of things at the time, such as famine, etc.

This¹ (rule) moreover is to be understood as applicable in the case of one transaction and one payment. If there are separate transactions with different persons, or even if the person is the same but there are different transactions on more than one occasion, gold, etc., would indeed increase as before, even beyond the twofold and other limits. And even in a single transaction, when the interest is recovered daily, monthly, or every year, and thus it is not² possible that the amount payable by the debtor might become twofold, the amount as made up of the interest recovered before, does certainly increase beyond (the) twofold (limit). As says Manu³ "In money transactions interest paid at one time (not by instalments) shall never exceed the double (of the principal)." "Recovered⁴ at one time" is also another reading. *Kusida* is money utilised for accumulation. Increase of that is *Kusida-Vrddhiḥ*; (such an increase) does not exceed *i.e.* does not rise beyond the double, if paid at one time, *i.e.* lent at one time. It exceeds beyond the double when the dealings are with different persons and give rise to separate transactions.

In the case where the reading is, "recovered⁴ once", it should be explained to mean that the interest would exceed the double when recovered in instalments from the debtor every day, every month or every year. Moreover it has even been said by Gautama⁵.—"If in a transaction the loan remains outstanding for a long time, the principal may be doubled." (Here) by the use of the singular number in "a transaction" (*prayogasya*) an increase beyond the double appears to be intended in the case where the transactions are different. By the use of the expression "outstanding for a long time" (*chirasthāne*) an increase beyond the double has been indicated in the case where the interest has been recovered in small quantities⁶. (39)

1. See *Dugdusa* vs. *Ramchandra* 20 Bom. 611-613.

2. Read द्वयासंभवात् for द्वैयसंभवात् 1. 20 page 29 see Bālambhaṭṭi Sk. P. 57. L. 1. 3. Ch. VIII. 15. 4. सकुदाहता. 5. Ch. XII. 31.

6. In other words it does forlid capitalisation of interest see *Sukhlal* vs, *Bapu* 24 Bom. 305.

Viramitrodaya

Now, of the Chapters on *Vyawahāra* to be expounded, following Manu and others such as in the text “of these, the first, the Recovery of Debts”, first in regard to the recovery of Debts, technically dealt with by Nārada¹ thus: “A debt which must be paid, and that which may not be paid, by whom, where, and in what way to be paid, and the rules as to the advance and the recovery of loans, are said to make up the (title) ‘Recovery of Debts, (1) (and) It is called *kusida*²; because by it is their living (secured) by the money-lenders. (98)” The Author points out the rules of adjustment by the end of the Chapter. There, first the Author States the (rules as to) interest

Yājñavalkya, Verses 37, 38, 39.

Sabandhake rne, ‘in a debt by a pledge’, the amount invested such as gold, &c., will be liable for two, three, four and five per hundred, respectively in the order (of the classes). Therefore the result is that by a Brāhmaṇa debtor who has taken a loan of a hundred of gold, &c., with a pledge, should be paid every month two of gold, &c.; by a Kṣatriya, three of gold, &c., by a Vais’ya, four of gold, &c., and by a Śūdra, five of gold as interest to the creditor. Similarly also, by a parity of reasoning, it should be understood that in a debt with a pledge, where an eighteenth part is the interest, for a hundred of gold and the like, less by two māshas, interest should be at two (per hundred) and onwards.

“Even³ when there is no pledge, but there is a surety, when it is without transfer, two per cent, per month has been stated”. *Sāshṭabhdgah*, ‘together with its eighth part; of the eighth part, of the eightieth part’; together with that, the eightieth part. Here also in the case of a Kṣatriya debtor and the like a larger rate is to be understood, by a parity of reasoning.

Kāntāragdha, ‘travelling through forests’ for a larger profit; debtors who are in the habit of trafficking through forests and the like places

1. Ch. I. 1.

2. Ch. I. 98. Lending money at interest. Brhaspati (XI. 2) derives this word thus: कुसितात्सीदतश्चैव निर्विशके: प्रगृह्यने । चतुर्गुणं वाऽप्यगुणं कुसीदाख्यमतः स्मृतम् ॥ which however is characterised by Dr. Jolly as fanciful. The rule of the Mahomedan law, however, laying a ban against interest is expressive of the same sentiment.

3. For this text, no Author is quoted; nor is the text quoted in full. From the comments of *Mitramiśra*, the word साइक appears to be in the omitted portion. This text has a resemblance with the text of *Vyāsa* which runs thus: सर्वे भाग आशीतः षष्ठो भागः सलग्नके । निराधाने द्विक्षतं न्यासलाभं उदाहृतः ॥ (see *Vyawahāra Mayākha* p. 75 l. 3).

shall pay *s'atam daśakam*, 'ten per cent.', i.e., hundred plus ten. Those of the sea, however, with the object of making big gains being in the habit of journeying over the seas, twenty per cent., i.e., twenty plus one hundred, should pay every month. Thus the conclusion is that for a hundred of gold, those resorting to the forests should pay ten of gold, and the seamen, twenty of gold.

Where, however, a higher or a lower rate of interest than what is stated above has been agreed to between the debtor and the creditor, there, that interest, *sarve*, 'all', the Brāhmaṇa and other debtors, 10 *sarvadu jātishu*, 'among all classes', as far as the mixed classes of creditors should pay.

Of the hypothecated beasts such as the cow and the like, or women, such as a female slave, &c., progeny itself is the interest for the mortgagor of the cow, &c. Here according to Ratnâkara it should be understood that in the case of the mortgagor who is unable to maintain them, the maintenance and the progeny of the cow, &c., and the female slaves, etc., is expected, and of the mortgagee the milk and the service are incidental to the pledge. Others, however, explain that in the case of the cow, the female slave, etc., deposited as a pledge, the owners of the cow, etc., the debtors should pay the interest, and when that is not possible the progeny itself is (to be regarded as) the interest.

Now the Author states the highest rates of interest: Of a liquid, such as clarified butter, etc., when pledged as for a debt, when remaining over for a long time, the interest shall increase upto eight times. By the word *parā*, 'highest', is indicated that in the case of an increase in the fields, etc., even when it is possible to measure it, it is excluded. Similarly, onwards, of the cloth fourfold, of the grain three-times, and of gold two times is the highest increase.

Here, in connection with the portion relating to increase, 30 Brhaspati² says: "Interest has been declared to be of four sorts; by others it is stated to be of five-kinds; and by others still, it has been declared to be of six kinds. Learn these by their characteristics: *Kāyikā* (bodily interest); and the *Kālikā* (periodical interest); similarly also *Chakravṛddhiḥ* (compound interest) is another; then the *Kāritā* (stipulated interest), *S'ikhāvṛddhiḥ* 'hair interest', and similarly also the *Bhogalābha*, interest by enjoyment. Of these, the characteristics and

1. i.e. although the object pledged, may actually increase more than eight-fold, and although it is possible to assess such increase, any higher amount is excluded by this rule.

2. Oh. XI. 4, 5.

other details, out of fear for prolixity, are not being expounded here, but should be followed in other Smṛtis¹.

Here interest at the eightieth part and the like rate has been stated to be legal interest, since Manu² has stated : “ By taking two or three per cent, one does not become a sinner³ for gain.” By *swakṛtām*, ‘ what was agreed to by himself’, there will not be a higher interest than what was stipulated for. That also is legal. More, however, would be against the law. 5

Hārita also, “ For twenty-five *purdṇas*,⁴ the interest for a month is eight *panas*⁵; thus it holds on for two months or four months until it reaches the double, where it stands; this is legal interest ; by this, one does not swerve from the law,” ‘reaches the double’, i.e., becomes double; ‘where it stands’, i.e., does not increase more than that. The legality is in regard to the aforesaid interest always for Vais'yas. The word *ādi* indicates that it holds in the case of others also. 10

Compound interest and the rest are certainly illegal. So says Brhaspati⁶: “ The use (of the pledge) after twice (the principal has been realised), and the compound interest also which is exacted, and also the original principal together with interest, that is usury, and is reprehensible.” 15

In regard to the highest interest, Manu⁷: “ In many transactions, interest paid at one time, shall never exceed the double (of the principal); on grain, fruit, wool or hair (and) beasts of burden it must not exceed five times (the original principal).” ‘Fruit’, i.e., the crop. ‘Wool or hair’, what may be cut, sheared, such as hair, other than those of the sheep. “ For gems, pearls and coral, for gold and silver, for the products of fruit, or of an insect, or for wool, the interest stops when it doubles the debt”, vide the text of Kātyāyana⁸: “ *Kaitam*, ‘of insect’, i.e., produced from an insect. 20

Gautama⁹: “ Interest on products of animals, hair, on products of a field, and on beasts of burden, (shall) not (be) more than five times 30

1. Note e. g. the following from Brhaspati XI. 6, 7, 8.

कायिका कर्मसंयुक्ता मासग्राह्या तु कालिका । वृद्धेवृद्धिश्रकवृद्धिः कारिता कृणिना कृता ॥
प्रत्यहं गृह्णते या तु शिखावृद्धिस्तु सा स्फृता । घृहात्तोषः शादः क्षेत्राद्वेगकामः प्रकीर्तिः ॥
शिखेव वर्धते नित्यं शिरच्छेदान्निवर्तते । मूले दत्ते तथैवैषा शिखावृद्धिस्तु सा स्फृता ॥

2. Ch. VIII. 143.

3. Does not expose himself to the charge of usury.

4. & 5. Both are coins, severally valued at 80 cowries and otherwise.

6. Ch. XI. 12.

7. Ch. VIII. 151.

8. Verse, 510.

9. Ch. XII. 33.

(the original)." 'Products of animals', other than *ghee*, such as milk, etc.

5 "For all sorts of oils, and for the different kinds of spirituous liquors, and on clarified butters, the interest has been declared to be octuple, as also for molasses and salt" vide the text of Kātyāyana¹.

Brhaspati² : "On precious metals, the interest may make (the debt) double; on clothes and baser metals, treble; on grain, quadruple has been declared; so also on vegetable products, beasts of burden, and wool or hair". 'Vegetable products', products of the field, 10 other than corn, such as fruit, etc. Also³ : "It has been stated to be quintuple on pot-herbs; sextuple on seeds and sugar-cane; and on salts, oils and spirituous liquors, the interest has been stated to be octuple; also likewise on raw sugar and honey, if the transaction be of long-standing."

15 In the case of corn, the mention of a double and various other rates is to be determined by regard to the price (into money). Thus, at the time of the advance, before the appearance of the crop a particular kind of price, if after the appearance of the crop it is reduced a little, then double, in case it is reduced even more than that, treble, further 20 more than that, quadruple, and further on, at the utmost reduction, quintuple, it becomes.

25 However all this statement about the increase of interest is by weight only, in accordance with the text of Hārita : "In course of time, double the quantity of grain increases as if treble." Or, in the order of the varṇas are the four kinds of increase to be adjusted. According to the Sīḥṭas : "If the grain becomes treble, according to the time and prosperity". In the case of beasts of burden, etc., by regard to the difference in the price, time, and the place, the different rates of interest are to be settled. Thus enough of prolixity.

30 Now the prohibitions regarding interest⁴: "The price or value of a commodity, wages, a deposit, a fine, what has been usurped,⁵ etc. What has been idly promised, and what has been won at stakes at dice; these do not yield interest, except under a special agreement (to that effect)", 'a commodity', i.e., a saleable commodity; 'wages',

1. Verse, 511.

2. Oh. XI. 13.

3. Oh. XI. 14, 15.

4. Nārada II. 36.

5. आभिहारिकम् other readings are (1) यत्त्रावरकम्—'what has been abandoned (by one and found by another); Dr. Jolly's edition (2) यश्च प्रकल्पितः (a fine) which has been ordained (V. Mayūkha).

i.e., salary ; ‘ usurped ’, i.e., obtained by fraud, deceit, etc. ; ‘ an idle promise ’, a donation without regard to *dharma* ; ‘ by dice ’, in the course of gambling what is staked ; these, unless specially agreed upon, i.e., where interest has not been determined upon, do not increase.

Kātyāyana: “On hides, crops, wines, and one’s gambling debts, price of commodities, always in all these, and on the bride-price of women, there can never be interest ; as also on debts incurred as sureties ”. ‘ Incurred as sureties ’, for a surety made liable for payment on account of suretyship. 5

Saṃvartah : “ No interest can be charged on woman’s property, on profits, and on a deposit remaining ambiguous, also for a suretyship, if not specially stipulated ”. Vyāsa: “ Suretyship, a pledge which has been fully enjoyed, (and) money not accepted even though tendered, do not carry interest against one who has approached ; (as also) a fine, and a bride’s price which had been promised ”. ‘ Of one who has approached ’, i.e., of the debtor who is under the control of the creditor—which the Author himself states hereafter by the text²: ‘ When tendered, does not accept, etc.’ (37, 38, 39). 10 15

S'ūlapāṇi.

Yājñavalkya, Verse 39.

When a she-goat and the like, or a female-slave and the like, are pledged as security, and no other interest is possible, their progeny itself is the interest. In the case of oil &c., when pledged for interest, the utmost interest is octuple together with the original i.e. the additional interest. In the case of clothes &c., in the order of enumeration, quadruple, treble, and double is the utmost interest. 20 25

As to the text of Brhaspati³: “On gold, the interest may make double ; on clothes and base metals treble ; on grain, it is stated to be quadruple, and so also on edible plants, beasts of burden, and wool or hair”, that is to be explained, by regard to a long standing loan and a loan of short duration. Śadah, ‘edible plants’ i.e. the fruit of trees &c. Wāhyo, ‘beasts of burden,’ such as a bullock and the like. Lavaḥ, ‘hair,’ such as the Chāmara &c. (39). 30

Rules regarding loan transactions have been laid down (above). Now follow the rules regarding the recovery of property advanced as a loan

1. Verse, 508.

2. Yājñ. II. 44.

3. Ch. XI. 18.

Yâjñavalkya, Verse 40.

One (a creditor) would not be blamed by the king for trying to recover an acknowledged debt; and if the debtor complain to the king while the debt is being recovered from him, he should be fined and made to pay (back) the loan.

5 **Mitâksharâ** :—*Prapannam*, acknowledged i. e. money admitted by the debtor, or proved by means of witnesses &c; *sâdhayan*, trying to recover, i. e. a creditor recovering by *Dharma* and such other means; *nṛpaterna vâchchyah*, would not be blamed by the king i. e. will not be prevented.

10 The Dharma and other means have been pointed out by **Manu**¹: “By moral suasion, by a suit at law, * Page 30, by deceit, or by starvation², a creditor may recover property lent, and fifthly also by force.”

15 Means of recovering a loan advanced. *By moral suasion*, *Dharmena*, i. e. by affectionate words and a straight talk. *By a suit at law* (*Vyawahârena*) i.e. by such means as witnesses, documents &c. *By deceit* (*chhalena*) e. g. by taking ornaments &c. under the pretext of some ceremonial celebrations &c. *By starvation* (*acharitena*), by abstaining from meals. By the fifth, viz. by force i. e. by imprisonment with iron fetters &c. (i. e. to say) money advanced for accumulation (of interest) should be recovered to oneself by these means.

20 25 By saying “For trying to recover an acknowledged debt” the Author indicates that he should be prevented by the king, from recovering a debt which has not been acknowledged by the debtor.

1. Ch. VIII. 49.

2. आचरितेन च is another reading. Dr. Buhler translates it as a customary proceeding, which he describes as—killing one's (?) wife, children, and cattle and sitting at the debtor's door, or by the creditor's starving himself to death. This is based on the following text of Brâhaspati cited by *Kulluka*—“दाराप्रयून्हत्वा कृत्वा दारोपवेशनम् । यत्रार्थी दार्यतेऽर्थे सं तदाचरितमुच्यते” || It will be clear that this is the process of sitting *Dharana* or making the *Trâgâ* and it is doubtful how far it deserves the exalted name of “A customary procedure.” In this view अचरितेन = अमोजनेन (by starvation) is a better and more expressive reading.

This very thing has been made clear by Kātyāyana¹ thus : “ A creditor who harasses a debtor who is demanding a trial, shall forfeit his claim and pay an equal fine ”.

Where, however, a claim has been (made to be) admitted by Dharma and other means, and if then while the amount is being demanded or recovered, the debtor goes to the king and complains against the creditor for trying to recover his due, that debtor becomes liable to be punished with a fine according to his capacity ; and, moreover, he is made to pay the amount to the creditor. The modes of compulsion by the king have been thus indicated:² “ The king should make a Brāhmaṇa pay the creditor only by gentle persuasion, others according to the usage of the country. The wicked should be made to pay by compulsion. An heir and a relative also should be made to pay by recourse to deceitful tricks ”. The text:³ “ If the debtor complain to the king while the debt is being recovered ”, should also be understood as a counter-illustration of the text: “ In a way which is a violation of the (law of) Smṛtis and usage.”⁴ (40)

Viramitrodaya.

Now the Author describes by four verses the process of recovering debt.

20

Yājñavalkya, Verse 40.

Prapannam, ‘ acknowledged ’, i.e., admitted by the debtor ; *artham*, ‘ debt ’; *sādhyan*, ‘ trying to recover ’. “ By moral suasion, by a suit at law, by artful management, or by starvation, a creditor may recover property ; and fifthly also by force ” by the methods as thus stated above by Manu,⁵ when recovering back, the creditor, *nṛpater na vāchyo bhavet*, ‘ should not be blamed by the king ’; i.e., will not be prevented by the king.

Sādhyamānah, ‘ while the recovery is being made ’, i.e., by the method stated being applied against him, with a view to ward it off. *nṛpam gachchhan*, ‘ going to the king ’, the debtor when not

25

1. Verse, 589.

2. By Kātyāyana, Verses 587, 588 ; other readings are, रजानं स्वामिन्...। रिक्षयनं सुहृदं वापि छलेनैव प्रसाधयेत् ॥ ५८७ ॥ वणिजः कर्षकाश्चैव शिल्पिनश्चात्रवीद्गृहुः । देशाचारेण दाप्या: स्पृदुष्टान् संपीड्य दापयन् ॥ ५८८ ॥

3. Yājñ. II. 40.

4. Yājñ. II. 5. (See p. 645, ll. 19-20).

5. Ch. VIII, 50,

778 S'ūlapāṇi, Mitāksharā—When several creditors appear and claim. [Yājñavalkya
Verses 40-41.

incapacitated should be fined and should be compelled to pay the amount to the creditor. By the use of the word *cha*, 'and', is added that even though without making a complaint to the king, he does not pay the amount through turbulence, etc., the debtor should be compelled to pay 5 the amount, and should be punished also. (40).

S'ūlapāṇi.

Yājñavalkya, Verse 40.

While a creditor is trying to realize an admitted claim, if the debtor complains to the king, he should not be charged thus viz. "How 10 do you do this?" When the debtor is being compelled by force, and he complains to the king, then he should be compelled to pay the amount to the creditor, and the penalty should be taken by the king himself. (40).

When several creditors appear simultaneously, against a debtor 15 who is one only, in what order should he be made to pay by the king? (Anticipating this question) the Author says:—

Yājñavalkya, Verse 41.

A debtor should be made to pay his creditors in the order of the receipt of the loans; after paying off a Brāhmaṇa (creditor), then alone the ruler of men (*should be paid*). 20

Mitāksharā :—When the creditors are of the same class, the debtor should be made to pay, by the king, the creditors in the same order in which the loans were taken. When, however (the creditors) belong to different classes, the Brāhmaṇa (should be paid) 25 first, and then the rest in order. (41)

Viramitrodaya.

When there are several creditors, in what order should he be made to pay the debt? So the Author says

Yājñavalkya, Verse 41.

Among creditors of different castes, first having given to the Brāhmaṇa, although incurred after, that of the Kshatriya, and thus circumstanced he should be made to pay the debt to a Vaiśya. There also, the special point, by a parity of reasoning, is that after paying the Vaiśya, then the debt of the Śūdra should be ordered to be paid. Of a 30

learned Brâhmaṇa, as also of a king the debt should be paid even without paying any other debt excepting that of a Brâhmaṇa.

That says Kâtyâyana¹: “But when there are several debts, whatever is incurred first, should be paid first, but that owing to a king should be paid after that owing to a learned Brâhmaṇa (514). Where several loans are incurred on the same day, in such a case one should put the debt on an equality, as far as the acceptance, maintenance, and profit are concerned; otherwise, however, in the order, (513). When a creditor established that a particular commodity was secured with his money, that money should be paid by the debtor to him alone and not otherwise (515)”. The king’s debt should be paid even before that of the learned Brâhmaṇa, having regard to the order stated in the text². (41).

S'ûlapâni.

Yâjñavalkya, Verse 41.

When there are several creditors, the debtor should be ordered to pay the debts in the order of their acceptance. When the Brâhmaṇa and the Kshatriya claim together, the Brâhmaṇa’s should be paid (first) although incurred later, and afterwards should be paid those of the Kshatriya and others. (41).

When, however, a creditor is weak and unable to recover an acknowledged claim by Dharma and such other means, and the amount is recovered (for him) by the king, in such a case the Author mentions a fine for the debtor and payment of costs by the creditor

Yâjñavalkya Verse 42.

A debtor should be made to pay by the king to himself ten per cent of the amount recovered; and a creditor who has won his case should be made to pay five per cent.

Mitâksharâ :—Adhamarnikâḥ, the debtor, râjñâ, by the king, sâdhîtât, of the money recovered, from the amount acknowledged; dasâkam s’atam, ten per cent; dâpyâḥ, should be made to pay. The king should take from the debtor in the shape of a fine, a tenth portion of the amount recovered from the acknowledged amount. This is the import.

1. Verses, 514, 513, 515.

2. This remark is not intelligible, for the पाठकम् is quite the reverse. The reading should be श्रोत्रियस्य पश्चात् and not श्रोत्रियात्पाद्, as it is.

A creditor, however, prāptārthaḥ, who has won his case, dāpyaḥ, should be made to pay, panchakam s'atam, five per cent, in the form of costs. The meaning is that the king should take a twentieth portion of the amount recovered by way of costs. In 5 the case of a realisation where the debt is not acknowledged, the distribution of fine has been indicated in the text:¹ "Where, upon a denial (by the defendant) a claim is proved, etc." (42).

Viramitrodaya.

When even an admitted debt the creditor is unable to recover, and if he recovers through the king, then a twentieth part should 10 be taken by the king from him; while stating this itself, the Author states the amount of the fine for the aforesaid debtor

Yājñavalkya Verse 42.

Rājñā, 'by the king', sādhītāt, 'of recovered', i.e., made to pay, daśakam śatam, 'ten per cent', to himself, the debtor should be 15 compelled to pay. In short, if one hundred gold are recovered, ten gold should be compelled to be paid. The creditor also who has secured his claim should be made to pay to himself by the king five per cent, that is to say, for a hundred of gold, five of gold should be caused to be paid.

By the word *tu*, 'however', is separated the payment first to the 20 creditor when obtained. By the word *api*, 'even', if penalty do not exist as a motive cause, it is suggested that the payment is meant as indicative as a means (of the recovery). At some places, the reading is *hi*. There also the same is the sense. (42)

S'ūlapāṇi

Yājñavalkya, Verse 42.

If the debtor who in the court having denied the claim by declaring "I do not owe", afterwards admits, he should be compelled to pay to the king at ten per cent from the established claim as a fine. (42).

The rule as to a wealthy debtor has been mentioned. Now 30 the Author mentions a rule in the case when the debtor is poor

Yājñavalkya, Verse 43.

An insolvent debtor of a lower class should be made to work for his debt; a Brāhmaṇa insolvent, however,

1. Yājñ. 11. 11. (See p. 686. 1. 33-34.)

should be made to pay by instalments according to his gains.

Mitāksharā:—A Brāhmaṇa creditor and others (belonging to superior classes) should, for a debt, *rñārtham*, About a pauper *i.e., for the discharge of a debt*, cause the debtor 5 of a lower class such as the Kṣatriya and others who has become *parikshinam*, *insolvent*, *i.e.*, moneyless, to do their usual karma, *work*, *i.e.*, agreeably to (the usage), *kārayet*, *should be made to do*, of their caste and without detriment to (the interest of) their family. A Brāhmaṇa, however, if insolvent, *i.e.*, moneyless, should be made to pay, *s'anaih s'anaih*, 10 *by instalments*, *yathodayam*, *according to his gains*, *i.e.* according as may be possible. 15

* Page 31.

Here the reference to a lower class is indicative also of an equal class; and therefore a debtor of an equal class also, if insolvent, should be made to do the work which is proper for him. The mention of a Brāhmaṇa is also indicative of the superior class, and therefore Kṣatriyas and others though insolvent should be made to pay their Vais'ya and other creditors (of a lower class), by instalments and 20 according to their ability. This very thing has been made clear by Manu:¹ “Even by personal labour shall the debtor make good (what he owes) to his creditor, if he be of the same caste, or of a lower one; but a (debtor) of a higher caste shall pay it gradually.” The meaning is that the debtor should by his conduct so transform himself into 25 a position that the distinction of a debtor and creditor would become extinct. (43)

Viramitrodaya.

The Author states a rule in regard to a poor debtor

Yājñavalkya, Verse 43.

30

Hinajātim, ‘of a lower class’, *i.e.* not of a higher caste than that of the creditor, such a debtor *parikshinam*, ‘insolvent,’ *i.e.* money-less, with a view to the liquidation of the debt, the creditor should cause *karma*, ‘*work*’ as desired by him, such as agriculture,

1. Ch. VIII. 177.

service &c. *Kāraye't*, 'should cause to be done.' *Brāhmaṇastu*, 'a Brāhmaṇa' debtor 'however,' although 'insolvent' *parikṣiṇah*, *yathodayam* 'according to his gains' i. e. according to the acquisition of wealth, *s'anaiḥ*, *s'anaiḥ*, 'by instalments' i. e. should be made to pay even in small driplets so as not to be detrimental to the maintenance of his family and such other necessary duties, and even if he be equal in caste to the creditor, he should not be made to do work.

This is only indicative. One higher than the creditor, such as a Kshatriya &c., should also, when impoverished, be made to pay by small instalments, as the reason stated by the Author for causing work to be done is his belonging to a lower caste, and vide this text of Kātyāyana¹ also: "Should make the Kshatriya, Vais'ya and Śudra of the same caste as his or of a lower caste make payment by work." Here, moreover, the liquidation of the debt by work is to be understood. (43)

S'ūlapāñi

Yājñavalkya, Verse 43.

One of a lower caste, as compared with that of the creditors, should be made to do work appropriate to his caste. A Brāhmaṇa however in a similar condition should be made to pay as may be possible without detriment to the maintenance of the family. As says Manu²: "Even by personal labour shall the debtor make good (what he owes) to his creditor if he be of the same caste or of a lower one; but one of a higher class shall pay it gradually." Here, 'of the same class' signifies one other than a Brāhmaṇa. (43).

Yājñavalkya, Verse 44.

When tendered, if a creditor does not accept back his amount lent, and if the same is deposited with a third person, it will not carry interest from that time.

Mitāksharā:—Moreover, *dhanam*, *an amount*, *prāyuktam*, *lent*, at interest; *diyamānam*, *being tendered*, by the debtor, if the creditor, out of greed for interest, *na gr̥hṇāti*, *does not accept*, bears no interest. and if the same is deposited in the hands of a third person by the debtor, then *tataḥ*, *from that time*,

i.e. after the deposit, *na wardhate*, it does not bear interest. If, however, even if deposited he does not give when demanded, then it carries interest as before.

Viramitrodaya.

By way as it were of stating an exception to the law of interest 5 stated above, the Author states the right of a Debtor

Yājñavalkya, Verse 44.

When being 'offered', *diyamānam*, the creditor does not accept the amount of his debt through covetousness for interest &c., that amount of his should be deposited by the debtor with a third party. 10 And that, thereafter i. e. after it is deposited with the third party, *na wardhate*, 'does not carry interest'. (44).

S'ūlapāṇi

Yājñavalkya, Verse 44.

So Samvarta: "No interest shall be charged on women's 15 property, on profits, nor on fixed deposits; on doubtful claims, also on a surety's liability, unless stipulated by oneself," 'fixed', placed between. (44).

Now the Author states *when* and *by whom* should a debt that ought to be paid, be paid 20

Yājñavalkya, Verse 45.

A debt which however has been incurred by the undivided members for family purposes should be paid by the coparceners when the manager of the family is either dead or has gone abroad. 25

Mitāksharā:—*Avibhaktaih, by the undivided members of the family ; Kutumbārtham*,¹ *for family purposes*; or by each separately; *yadrṇam krtam*, a debt which has been incurred, that must be paid. debt the head of the family must pay. When 30 he is either dead, prete, or has gone abroad, proshite; *rikthināḥ*, his coparceners; *dadyūḥ*, should pay.

1. कुटुंबार्थे—Thus where a debt was contracted by the manager and for a joint family concern, it will bind the members. *Gokul vs. Amarchand* 9 Bom. L. R. 1289; and so a trade debt incurred by a widow in management was held to be binding. *Sakarbhai vs. Maganlal* 3 Bom. L. R. 738 (F. B.); see also *Sheo Pershad vs. Satap Lal* 20 Cal. 453; *Sham Sundar vs. Achhen Kumar* 25 I. A. 183; 27 All. 71. *Raghunathji Tarachand vs Bank of Bombay* 34 Bom. 72. *Suraj Baksh Singh vs. Raj Kedar Nath* 7 Luck. 505.

784 Viramī, S'ūlapāni & Mitāksharā—What debt should be paid? [Yājñavalkya
Verses 45, 46.

Viramitrodaya.

Now, a debt, what kind should be paid by whom, and by whom also it should not be paid, the Author states that by seven verses

Yājñavalkya, Verse 45.

5 *Avibhaktaiḥ*, 'by the undivided members', such as the brothers, father, etc. *Kutumbasya*, 'of the family' : necessity such as maintenance &c., *arthe'* 'purpose,' for the maintenance (of the family), *yadr̄nam kṛtam*, 'what debt has been incurred', *tat*, 'that' debt, *r̄kthinah*, 'the co-parceners', i. e., the undivided brothers and the like all, *kutumbini*, 'on the manager 10 of the family' i.e., the person who incurred the debt for a family purpose such as the father &c., *prete*, 'when dead', or *proshite*, 'has gone abroad', *dadyuh*, 'should pay'.

By the use of the word *tu*, 'however', is excluded a debt which has been incurred for a special purpose of his own, and which must be paid by 15 him¹ only, and not by others i. e., the co-parceners. (45).

S'ūlapāni.

Yājñavalkya, Verse 45.

Of the members living jointly, such as the uncle, nephew &c. by one if a debt is incurred for a family purpose, when that member has 20 gone abroad or is dead, that debt, these should pay.

Manu² says that what was contracted for the joint family, must be paid even by the divided members : "If the person contracting the debt be dead, and the money was appropriated for the purpose of the family, such must be paid by the members themselves even though separated." (45).

25 The Author states by an example by whom (a debt) should be paid

Yājñavalkya, Verse 46.

A woman need not pay a debt incurred by her husband or son; nor a father that (incurred) by the son; 30 except when it is (contracted) for family purposes, nor likewise a husband that of the wife.

1. Thus a mortgage by a manager or even a father for starting a new business does not bind the others. *Benares Bank Ltd. vs. Hari Naren* 54. All 564; *Guru Mukh Singh vs. Shiv Ram* 17 Lah. 53. *Sabha Chand vs. Sambhu* 39 Bom. L. R. 118.

2. Ch. VIII. 167.

Yājñavalkya] *Mitāksharā, Viramitrodaya Sūlapāni.—What may not be paid.* 785
Verse 46.

Mitāksharā :—A debt *Patyā*, incurred by the husband; *yoshit*, the woman i. e. the wife, should certainly not pay; *putreṇa kṛtam*, that contracted by need not be paid. *the son, yoshit*, the woman i. e. the mother should not pay. Similarly, a debt incurred by the son, the father need not pay. So the husband need not pay *strikr̥tam*, that contracted by the wife. The clause *kutumbārthādr̥te*, except when it is (contracted) for family purposes, qualifies all. 5.

And therefore by whomsoever a debt is incurred for a family purpose that should be paid by the head of the family. In his absence, it should be paid by those who are entitled to take his share. This has already been said¹. 10

Viramitrodaya.

The Author connects the aforestated rule with both

Yājñavalkya, Verse 46.

15

Patiputrābhyaṁ kṛtam, ‘by the husband and the son, incurred’, a debt, *yoshit*, ‘the woman’, either the wife or the mother of the person contracting the loan, should not pay back to the creditor. *Putreṇa Kṛtam* *r̥nam*, ‘a debt incurred by the son’, the father need not pay. *Striyā*, ‘by a woman’, i. e., by the wife, similarly, unless incurred for a family purpose, the debt a husband need not pay. This is by implication². As says *Vishnu*³: ‘Nor what was contracted by a woman, either the husband or the son (should pay)’. (46). 20

Sūlapāni.

Yājñavalkya, Verse 46.

25

So *Bṛhaspati*: “A debt incurred by the son, may be discharged by the father, if agreed to (by him); or he may make (the payment) out of affection for the son; not otherwise.” (46).

1. Verse 45 above p. 783.

2. उपलक्षणम्—Implication—स्वप्रतिपादकत्वे सति स्वेतरप्रतिपादकत्वम् Implication of something in addition of any similar object when any one is mentioned; a part for the whole, or an individual for the species, or of a quality for that in which the quality exists. *Apte*.

3. Ch. VI. 32,

The Author will say¹ further on that a debt should be paid by sons and grandsons. He mentions by anticipation an exception to the rule

Yâjñavalkya, Verse 47.

5 That which was contracted for the purposes of spirituous liquor, lust, or gambling, or which is due as the balance of an unpaid fine or toll, as also a gift without any consideration the son should not pay (such) paternal debt.

10 Mitâksharâ :—A debt which was contracted² for drinking surâ, *spirituous liquor*. Contracted for kâma, *lust*, i. e. brought about by a passion for women. In dyûte, *gambling* i. e. brought about by a defeat (in it); dandasulkayor, avasîshṭam, *the balance due from a payment of fine or bride-price*. Idle gifts vṛithâdânam, *gifts without consideration*, what has been promised to rogues, bards, wrestlers &c. As it has been said : “ What has been given to a rogue, a bard, a wrestler, a quack, a liar, and a cheat, and to swindlers, itinerant singers and dancers and to thieves bears no fruit.”

15 20 * Page 32.

Such a debt, when incurred by the father, the son and others should not pay i. e. to the vintner and others.

25 Here from the use of the word ‘balance’ in the text “a balance of an unpaid fine or toll” it should not be supposed that the entire amount is to be paid. As Aus’anasa has said: “A son should not pay a fine or the balance of it, the (amount of the) toll or its balance, and also whatever is not³ legal or capable of being recovered by a suit.” It has also been said by Gautama⁴: that “(money due from a father on account of) a debt incurred for spirituous liquor, or a sulka⁵, or in gambling, or for amorous pleasures

1. Verse 50 p.

2. सुरापनेन i. e. सुरापनाय Here the Instrumental has the force of the Dative. The instrumental denotes the हेतु under the व्या. सू. ‘हेतौ’ 2-3-23. The example given in the कौमुदी is अध्ययनेन वसति—where अध्ययनेन is equivalent to अध्ययनाय।

3. अव्यवहारिकम्—see Durbar Kachar Odha Lal vs. Kachar Harsar 32 Bom. 348 and cases cited in Gharpure’s Hindu Law (1931 Ed. p. 232).

Where the liability of the father arose under a criminal offence e. g. theft Cr. misappropriation Mahabir Prasad vs. Baldeo Singh 6 All, 234. Toshan Pal Singh vs. D. Cf. Agra 61, I. A. 350.

4. Oh. XII. 38.

5. Haradatta—interprets Sulka as bride-price. “ शुल्कं प्रतिशृत्य विवाहं कृत्वा मृते तत्पुत्रं न तच्छुल्कमभ्यामवाति । ” sulka also means a tax, toll &c.

as also a fine shall not involve a son". The meaning is that they do not devolve upon a son. By this (text) a debt which should not be paid has been mentioned.

Viramitrodaya.

Even a debt incurred by the father, sometimes need not be paid ; 5
that the Author states

Yâjñavalkya Verse 47.

For *Surd* 'spirituous liquor', and like causes, *kṛtam*, 'contracted', *dandam*, 'fine', or *śulkam* 'bride-price', as also the balance of it. Of the three words is formed the *Dwandwa* compound as if it is a single word. 10
Vṛthā, 'idle', without regard to *dharma*, what was promised to be given—all this (kind of) debt *paitṛkam*, 'incurred by the father', *iha*, 'here', i.e., in satisfaction of a proceeding started in this world, *putro*, 'the son', *na dadyat*, 'need not pay'. For the father's emancipation in the other world, however, he may pay at his option. 15

By the use of the word *eva*, 'also', is excluded the non-payment of what was promised by the father for a religious purpose, vide the text of *Kâtyâyana*¹: "Whether while at ease or in distress, when a gift has been promised for a religious purpose, and the donor die without completing the gift, his son should be compelled to make it good; of this there is no doubt." 20

By the use of the word *tathā*, 'similarly', are included merchandise, etc., mentioned by others, so says *Gautama*²: "Sons need not pay a surety debt, a debt incurred in trade, the bride-price, drinking and gambling debts, as also a fine." 'Surety debt', i.e., an obligation incurred as a surety for appearance, or surety of assurance. 25

*Bṛhaspati*³: "A debt incurred for spirituous liquor, or a gambling debt, an idle gift, a promise made under an amorous influence, or in wrath, a surety debt, or the balance of a fine, the sons should not be compelled to pay." *Vyâsa*: "The fine or the balance of a fine, the bride-price, or a balance of it need not be paid by the son, as also *na vyâwahârikam*, i.e., that which is not incurred in accordance with law." *na Vyâwahârikam*, 'not incurred according to law', which is excluded by the law, such as that which was caused to be entered into under compulsion. 30
35

1. Verse 566, or 654.

2. Ch. XII. 38.

3. Ch. XI, 51.

788 Virami. S'ula. Mitâksharâ—Mother's debt, the son need not pay. [Yâjñavalkya
Verse 48.]

Kâtyâyana¹ explains what is incurred under an amorous influence or in wrath : “ Whether under a writing or even without it, what was promised, must be paid. What is promised to a woman of another should be known as a debt incurred under an amorous influence (564).

5 Where after causing injury in anger or having caused destruction of property, what was promised by way of pacification, that should be known as a debt incurred in wrath ” (565).

Here, by the mention of a fine, comes to be included its balance ; its repetition again, therefore, is intended to indicate that such should 10 be made in the case of a very large fine ; a small balance, however, need not at all be paid. According to Ratnâkara it is deducible that in the case of a small fine even the entirety need not be paid. (47)

S'ûlapâni.

Yâjñavalkya, Verse 47.

15 The father's debts (incurred) for drinking spirituous liquor or for sexual intercourse with women belonging to others, incurred for gambling, as a penalty ; the son should not pay. What has been admitted by the father as a debt to be paid is the 'father's debt'. A mother's debt the son need not pay. (47).

20 The Author mentions an exception to the text² “ Nor a husband that of the wife.”

Yâjñavalkya, Verse 48.

25 The debt of the wife of a herdsman, vintner, dancer, washerman or hunter should be paid by the husband ; since their livelihood depends upon them.

Mitâksharâ :—Gopâh, *herdsman i. e. a cowherd* ; saundikâh, *a vintner i.e. a liquor-manufacturer* ; sailûshah, *a dancer, i. e. an actor* ; rajakah, *a washerman i. e. a dyer of clothes* ; wyâdhah, *a hunter i. e. pursuing the game*.

30 By the wives of these whichever debt is incurred that should be paid by the husbands. Yasmât, since, vriddih, *their livelihood i. e. living* ; tadâsryâ, *depends upon them, i. e., dependent upon women*.

1. Verses 564, 565.

2. Yâjñ. II 46 page 784. ll. 28-29 above,

Yājñavalkya] *Viramitrodaya, Śūlapāṇi Mitakṣhāra—When is husband liable?* 789
Verses 48-49.

By specifically mentioning the reason (of this rule) viz. "since their livelihood depends upon them" it appears that others also whose livelihood depends upon women should also pay a debt incurred by the wife.

Viramitrodaya

5

'Not the husband, that contracted by the wife, similarly'; thus it has been said¹; the Author mentions exceptions to this

Yājñavalkya, Verse 48.

Gopah, 'herdsman' i. e., a cowherd; *śaundikah*, 'a vintner', i. e., a liquor-manufacturer; *sailaśho*, 'a dancer', i. e., an actor; *rajako*, 'a washerman' i. e., a dyer of clothes; *vyādho*, 'a hunter, i. e., one who subsists on hunted animals; the wives of these 'tāsām rāṇam' their debts'; *patir dadyāt* 'the husband should pay'; since, *teṣhām*, 'of these', i. e., of the cowherd and the rest, *vṛttir*, 'livelihood', i. e., maintenance, *tadāśrayā*, 'depends on them', i. e., is dependent on the wives.

15

Here the statement of the rule having been made with the statement of the reason, it appears that others also whose livelihood depends upon their wives, such as the fisherman, potter &c., should pay the debts contracted by the wives. (48)

Śūlapāṇi.

20

Yājñavalkya, Verse 48.

On account of the rule having been stated together with the reason, the wives of foresters &c. also are included. (48).

The Author mentions the exception to the rule that "A wife should not pay a debt incurred by the husband".

25

Yājñavalkya, Verse 49.

A debt agreed to by her, or which was contracted by her jointly with the husband, or by herself (alone), should be paid by a woman. A woman is not bound to pay any other debt.

30

1. Yājñ. II 46 page 784 l. 3.

Mitâksharâ :—By the husband who was either dying or proceeding on a journey, pratipannam, a debt A debt which *which was agreed¹ to*, on being charged or was agreed to enjoined, such a debt of the husband, deyam, 5 should be paid. *should be paid.* Likewise a debt which was incurred by the wife, patyâ saha, *jointly with the husband*, even that, should be paid by the wife in the absence of the husband, when she is sonless. So also a debt which was incurred *swayameva*, by *herself alone*, should even be paid (by her).

10 It may be said :—“It need not be mentioned that the three kinds, such as a debt agreed to by the wife, &c., should be paid by her”; because there exists no doubt about² it.

The answer is that on account of the text³: “A wife, a son, 15 and a slave—all the three are considered to be incapable of having property; whatever they acquire becomes the property of him to whom they belong”, they are without any property; and a doubt may be created about the non-payment of agreed debts, &c., and hence the text: “A debt agreed to by a woman should be paid by 20 her” has been mentioned. Likewise the text referred to above does not lay down the incapacity of women and others to hold property; inasmuch as the object of the text is to argue their dependence alone. Moreover, this will be made clear in the chapter on Partition.

It may also be said :—“Then it need not have been said that 25 a woman is not bound to pay any other debt,” because the non-liability

1. The Translation given here is in accordance with the two glosses viz., Bâlambhaṭṭi and Subodhini. The better rendering of the Mitâksharâ would appear to be as follows: “That which was assented to by the wife acting under the wish of her husband who was either in a dying condition or was about to set out on a journey.” This would make it a debt incurred by her but for and on behalf of her husband. The two glosses appear to indicate it as a debt incurred in the first instance by the husband, but of which the liability was subsequently undertaken by the wife when the husband was on his death-bed or about to set out on a journey.

2. i. e. about her liability to pay, on account of the agreement.

3. Manu VIII. 416.

for other debt follows from the principal rule itself.¹ To this the answer is that it is mentioned as an exception to the general rule contained in the text.¹—“A debt agreed to by a woman should be paid by her, as also that which was contracted by her jointly with the husband.” The purport is that *anyat*, *any other*, bad debt, covered by the text² “a debt incurred for spirituous liquor or for amorous passion, &c.” should not be paid even if it had been agreed to or contracted jointly with the husband. 5

Viramitrodaya

‘Not³ the wife, (a debt contracted) by the husband or the son’, 10 ending with this, it has been stated that a wife need not pay a debt contracted by the husband ; there, the Author states a special rule

Yājñavalkya, Verse 49.

A debt contracted by the husband, for whatever reason, what has been *pratipannam* ‘acknowledged,’ i. e., admitted by him as repayable by himself, that, or that which was jointly contracted along with the husband, or what was contracted by the wife herself, that must be paid by the wife ; no other debt is a woman bound by pay. 15

‘By the husband’—this includes by implication, ‘by the son’ also. As says Kātyāyana:⁴ “contracted along with the husband, or the son, or incurred solely by herself.” Nārada⁵: “Not the wife should pay what was contracted by the husband, similarly that contracted by the son. Or if by a husband on the point of death she is requested—‘Oh dear, pay this,’ then even if not acknowledged, she should—if the woman has taken (his) wealth.” (49) 20. 25

S'ūlapāṇi.

‘Not³ the wife &c,’ to this the Author states an exception

Yājñavalkya, Verse 49.

By the words *yad*, *wá* &c., ‘or that which &c.’, vide the text of Kātyāyana⁴: “With the husband, or along with the son &c.”. 30 Kātyāyana⁶: “By a husband who was about to die, when a woman was charged thus: ‘This debt should be paid by you’, even though not agreed to, she should be made to pay if she is possessed of wealth”. (49).

1. i.e. the one contained in the first three quarters of Yājñ. II. 49.

2. Yājñ. II. 47. 3. Yājñ. II. 46. 4. Verse, 546.

5. Ch. V. 16. also see Kātyāyana Verse 547. 6. Verse, 547.

The Author mentions again the threefold classification, *viz.* what debt should be paid, and at what time also, and when should it be paid

Yājñavalkya, Verse 50.

5 When the father has gone abroad, is dead, or is immersed in difficulties also, his debt should be paid by the sons and grandsons; in case of a denial, when established by witnesses.

10 Mitāksharā :—If the father, without paying a debt which is payable, *pretaḥ*, *be dead*, or is gone to a distant country, or is attacked by an incurable disease by sons and grandsons. and the like, then the debt incurred by him when made known, (should be paid) by the son or the grandson; and even when there exists no 15 property of the father, in their capacity as son and grandson.

20 Here the order (to be observed) is also thus: in the absence of the father, the son, in the absence of the son, the grandson. When the son or the grandson, *ninhāve*, *set up a denial*, a debt, *kṛte*, *proved by* (the plaintiff creditor) *sākṣibhāvitam*, by means of *witnesses*, and others should be paid by the sons and grandsons. This is the (order of) construction.

* Page 33.

25 Here the text says only so much, *viz.* “When the father has gone abroad.” The particular interval, however, should be allowed as mentioned by Nārada¹: “Where the father, uncle, or the eldest brother has gone abroad, the son (nephew or younger brother) is not bound to pay his debt before the lapse of twenty years.” And even in the case of death, he should not pay before he reaches the age of majority. After reaching the age of majority, however, he should pay. 30 That period, moreover, has been indicated by the same Author² “Up to the eighth year, a child is viewed in the same light as one in the embryo. A youth who has not reached the age of sixteen, is called a *Pauganda*. After that he is (considered as) a major and is independent in the absence of his parents.”

1. Ch. I. 14.

2. Nārada Oh. I, 35-36.

Although after the death of the parents he becomes independent even though a minor, still he does not become liable for (the payment of) debts. As has been said¹: "One, who though independent, has not yet attained (the age of) majority is not liable for a debt. For it has been laid down that (real) independence belongs to the senior ; (and) seniority is determined both by capacity and age." Similarly a prohibition against an arrest or summons is also noticeable *vide*²: "One who has not arrived at years of discretion, a messenger, one about to distribute alms, one observing a vow, and persons immersed in difficulties, these persons must not be arrested, nor shall the king summon them (before a court of justice)". Therefore, "Hence every one standing in the capacity of a son, leaving aside his personal interests, should free his father from debts by (all) efforts, so that he may not (have to) go to hell." 'Every one standing in the capacity of a son' should be explained as 'a son who has attained the age of majority'. For (offering) a *s'râddha*, however, even a youth has authority, *vide* the text of **Gautama** *viz.*: "One must not make him (a child) recite Vedic Texts, except in pronouncing *Swadhâ*".

By the use of the plural number in "Sons and grandsons," (it is indicated that) if there are several sons who are divided, they should pay according to their respective shares. If they are undivided, and are living jointly in a body, giving the managership according to qualifications, it appears that the manager alone should pay. As says **Nârada**⁴: "Therefore, when the father is dead the sons should pay the debt each according to his share, when they are divided ; or if undivided (it should be paid) by one who holds the lead (in the family)."

Here although, it has been generally said that 'the debt should be paid by sons and grandsons', even then a distinction should be observed that by the son the debt should be discharged together with interest similarly as the father would do ; by the grandson, however, only the amount equal to the original

1. By *Nârada* Oh. I. 31.2. *Nârada* Intro. I. 52.

3. *Gautama* II, 5. The expression "pronouncing *Swadhâ*" includes by implication the performance of all exequial rites". (पितृस्य सर्वस्य कर्मण इपलक्षणम्) हरदत्तः।

4. Oh. I. 2.

794 Mitakshara, Viramitrodaya—Grandsons for the principal amount only. [*Yājñavalkya*
Verse 50.]

principal and not the interest. *Vide* the text of Brhaspati¹: “The debt of the father which has been proved, should be paid by the sons as if it were their own (debt); the grandfather’s debt should be paid in an even amount; his (*i. e.* grandson’s) son, however, is not liable to pay any debt.” Here from the general use of the term ‘proved,’ the use of the term ‘witness’ in the expression “established by witnesses” is by implication indicative of any means of proof. Equal amount (*samam*) *i. e.* as much as was taken should be paid, and not interest. His son (*tatsutah*) *i. e.* great-grandson is not liable to pay when he has received no property. This, moreover, will be made clear in the next verse.

Viramitrodaya.

In the case of a debt contracted by the father, or by the grandfather, when neither is available for payment, by whom should it be paid? So the Author says

Yājñavalkya, Verse 50.

Proshite, ‘has gone abroad’ *i. e.*, is travelling; *prete*, ‘is dead’; *vyasane*, ‘in difficulties’ such as by an incurable disease or the like, *abhiplute*, ‘immersed’ *i. e.*, overpowered; *pitari*, ‘on the father’ or the grandfather also; their ‘debt’ *rṇam*; *ninhave* ‘on a denial’ *i. e.*, on a concealment by the negotiator of the loan, or when disputed by the son and the grandson, *sākṣyādibhiḥ* ‘by witnesses’ &c., and the like means of proof; *bhāvitam*, ‘established’ *i. e.* proved by the creditor, such should be paid by ‘sons or the grand-sons’, *putrapautrerwā*.

By the use of the word *api*, ‘also’, is included the taking on a ‘renunciation’, (पत्वज्या), *vide* the text of Vishnu²: “When the person who borrowed the money is dead, or has become an ascetic, or has gone out on travel for twelve years or more, the debt should be paid by the sons or the grand-sons, and not by any further (descendants) if unwilling.”

The expression ‘for twelve years’ has application where the debt is incurred for other than a family purpose.

By the expression, ‘by the sons or the grand-sons’ are excluded the great-grandsons, *vide* the declaration in the text “and not by any further if unwilling”.

1. Oh. XI. 49. But where ancestral assets have been recovered even a great-grandson is liable, see *Masitullah vs. Damodar* 53 I A 204–212; 48 All, 518.
2. Oh. VI. 27.

Here Vyâsa¹ mentions a special rule : “ A debt of the grandfather should be paid ; a son should pay a liability incurred on account of surety-ship ; he should be compelled to pay an equal amount ; his son, however, must not be compelled to pay ; this is certain”. *Samam*, ‘equal’, *i. e.* without interest. ‘His son’, *i. e.* the son of him who has to pay an equal amount. (50). 5

S'ûlapâñi

Yâjñavalkya, Verse 50.

When the father who has incurred a debt, is addicted to gambling, prostitutes, and other vices, or is attacked by an incurable disease or the like, as also when he has fallen, in a case of dispute, what has been demonstrated by witnesses and the like, should be paid. 10

So Nârada² : “ When the father is dead, the sons should pay the debt according to their shares”. Brhaspati³ mentions a special rule : “ The father’s debt, when proved, must be paid by the sons as if it were their own ; the grand-father’s should be paid, (but) equal⁴ ; but his son, has not to pay at all”. ‘As if it were his own’, *i. e.* with interest. 15

Kâtyâyana⁵ : “ When the father is alive, but is oppressed by a disease, as also when he has gone abroad for twenty years, a debt contracted by the father should be paid by the sons”. (50). 20

In the discharge of a debt, the debtor, his son and grandson have been indicated as the three persons who are liable ; their order of liability has also been pointed out when they all co-exist. Now the Author mentions the order (of liability) when these and (others also) who are liable, exist together 25

Yâjñavalkya, Verse 51.

The heir who takes the heritage, should be made to pay his debts, as also he who takes the woman (of the

1. This is an important text as it lays down different kinds of liabilities and on different bases thus. (1) A son is liable to pay a surety-debt but only the principal, and not the interest (2) and so is a grandson liable to pay the grandfather’s debt, only the principal, and that too for an ordinary debt, but not a surety-debt. (3) In either kinds of debts and persons, the liability does not extend to their sons. See however, note 1 on p. 794.

2. Oh. I. 2.

3. Ch. XI. 49.

4. *i. e.* without interest, see the text of Vyâsa and the note on p.

5. Verse 548.

deceased), or (failing these), the son when the parental estate has not gone to another. Of a sonless man, those who take the heritage (should be made to pay the debts.)

5 **Mitâksharâ:**—Property which belongs to another, but becomes one's own otherwise than by purchase etc, is (termed) riktha, *heritage*. *He who takes the heritage* by inheritance is (called) a riktha-grâhah. *He should be made to pay the debt*, sa ṛṇam dâpyah. This is the meaning. He¹ who takes the property of another in the form of a heritage, should be made to 10 pay the debts incurred by such a one, and not a thief etc.

15 *He who takes the woman i. e. the wife, is a Yoshidgrâhah.* He should be made to pay in the same manner. Whosoever wife a man takes, that man should be made to pay the debts of him. The wife has been specially mentioned as it is (*i. e.* the term) 20 incapable of falling under the term riktha, as also it is indivisible property.

25 *Putro, a son, also when the parental estate has not gone to another, ananyâśritadravyah,* should be made to pay the debt. That which has gone to another is 'wealth gone to another,' anyâśritam. He whose wealth, belonging to his father or mother, has gone to another is one whose wealth has gone to another, anyâśritadravyah. *He whose wealth has not gone to another* is an ananyâśritadravyah; *Putrahinasya, of a sonless man, rikthinaḥ, those who take the heritage,* should be made to pay the debts. This is the construction.

When these co-exist, the order (of priority) is the same as is stated in the text *i. e.* he who takes the

* Page 34 heritage should be made to pay the debts; in his absence he who takes the wife; and in

30 his absence the son.

51. See *Munshi Karim Uddin vs. Kumar Govind Krishna* 31 All.497 (P.C.) The liability is personal—The debts are not a charge upon the estate. *Laxman vs. Saraswatibai* 12 Bom. H. C. R. 98.

As regards co-owners taking by survivorship, see *Deen Dayal vs. Jagdip Naran* 4 I. A. 247. *Udaram vs. Ranu* 11 Bom. 11. C. R. 76.

A widow taking assets is liable. *Jayanii Subbaia vs. Alamelu Manjamma* 27 Mad. 45. But not, if the debt was improper. *Kissendas vs. Rangubai* 9 Bom. L. R. 382.

It may be said that of these the co-existence itself is not possible ; because according to the text¹ " Not brothers, nor the paternal ascendants, (but) the sons are entitled to take the heritage of the father," when a son exists, it being impossible for any other to take the inheritance. It is also not possible to find one 'who takes a wife'—on account of the text² " Nor is a second husband ever recommended for virtuous women." Further, it is also improper to say, that the son should be made to pay the debt, as it has been (already) said that 'the debt should be paid by sons and grandsons'. The qualifying expression 'when the parental estate has gone to another' is also meaningless, as it is impossible for the property to go to another when the son exists ; and even if it were possible, that import is already expressed by the clause "He who takes the heritage &c." Lastly, it should also not be said that "(The debts) of a sonless man (should be paid by) those who take the assets," because it has been established that he who takes the assets should be made to pay the debts even if the son exists. It follows therefore that much more is one who takes the assets liable to pay the debts when there is no son.³

To this the answer is as follows : It is possible that another may take the heritage (even) when the son exists, as there is no (right of) succession to inheritance for the im-

The Answer. tent, the blind, the deaf and the like others even though they occupy the position of sons. Moreover, the Author will say further on,⁴ after commencing (in order) with the impotent and others, that "these should only be maintained without a share." As **Gautama**⁵ has said: "According to some, the son of a woman of equal caste even does not inherit, if he be living unrighteously." Hence also, when the sons are impotent or otherwise (incompetent), and the son of a woman of equal caste leads an unrighteous life, the uncle, his son and (like) others take the heritage.

1. Cf. Manu. IX. 185.

2. Cf. Manu. Ch. V. 161.

3. Here ends the five-fold objection.

4. II. Verse 140.

5. Ch. XXVIII. 40.

Although it is not possible for one to take the wife of another as the *S'āstras*¹ are opposed, still one who transgresses the prohibition certainly becomes liable to discharge the debts incurred by the former husband. A man is called a *Yos'hidgrāhi*² when he takes the last of the four kinds of *Swairīni* (wanton) women or the first of the three kinds of *Punarbhū* (re-married) women: As says Nārada³ “(Besides the lawful wives) seven other sorts of wives are mentioned in order, who had⁴ previously belonged to another. Among these the *Punarbhū* (re-married) is of three kinds, and the *Swairīni*

5 Nature of women (wanton woman) is fourfold (45). “A maiden owned by another not deflowered, but bearing the taint of the and others. acceptance⁵ (only) of the hand (by the bridegroom) is termed the first *Punarbhū* on account of the performance of the ceremony of marriage a second time⁶ (46). When

10 15 a woman has committed a crime and she is given in marriage to another by the elders, taking into consideration the usages of the country, is termed the Second *Punarbhū*⁷ (52). Who has ‘committed a crime’ means who has ‘committed adultery’. “When a woman in the absence of the brothers-in-law, is given (in marriage) by her relations

20 to a *sapinda*, who is of the same caste, she is termed the third *Punarbhū* (48). When a woman, no matter whether she has borne children or not, goes to live with another man through lust, even while her husband is living—she is the first *Swairīni* (49). One who, after

1. Or, as it would be opposed to the Śāstras. But it should be noticed that a custom exists e. g. among the Ahirs of the United Provinces to take on to himself the wife of a debtor dying without redeeming the debt. And an instance was noticed very recently in Central India where the brother redeemed the wife of his deceased brother taken on by an unpaid creditor.

2. One who takes the wife of another. 3. Ch. XII. 45-53.

4. Dr. Tolly translates as, “Who have previously been enjoyed by another man”.

5. Pāṇigrahaṇa (पाणिग्रहण) is the acceptance of the hand of the bride by the bridegroom.

6. In Dr. Jolly's edition of the Nārada Smṛti, this verse has been placed as descriptive of the last of the *swairīni* women, exchanging it with verse 47 which is given there as descriptive of the second *Punarbhū*. While both Vījhāneśvara and Mitra-miśra here as also in his Digest (see page 347) give this as descriptive of the second *Punarbhū*. In the Smṛtichandrikā also Devaṇabhaṭṭa cites this as from Nārada as characteristic of the second *Punarbhū*. (see p. 173 l. 5)

having left the husband of her youth and betaken herself to another man, returns into the house of her husband is known as the second *Swairini* (47). When after the death of her husband, and leaving aside her brothers-in-law and other near relations a woman unites herself with a stranger through love, she is called the third *Swairini* (50). One who having come from a foreign country, or having been purchased with money, or being oppressed with hunger or thirst, gives herself up to a man, saying.—‘I am thine,—is declared to be the fourth (*Swairini*). “The debts contracted by the husbands of the last of the *Swairinis* and of the first of the *Punarbhūs* must be paid by him who lives with them.”¹

The same author has mentioned even other persons (than these) who take the wife of another who are liable for the discharge of debts : “If however, a woman who has considerable property or has a child and repairs to another man with these, that man must pay the debt contracted by her husband, or he must abandon her.”² One having considerable property is a *Sapradhanā* i. e. possessing enormous wealth. So also “He who has intercourse with the wife of a dead man who has neither wealth nor a son, shall have to pay the debt of her husband, because she herself is considered as his property.”³

Moreover, the repetition of the word *putra* is only indicative of order. By the expression *ananyāśritadravyah* it is indicated that even when there is no heritage, of the many sons, he alone is competent to discharge the debts who is competent to take a share and not the incompetent, such as the blind and like others. The expression “Of a sonless man, those who take the heritage” is also indicative of one who has no ‘son or grandson.’ i. e. if the great-grandsons etc. take the heritage then they should be made to pay the debts, and not otherwise ; this is the meaning.

It has already been said that sons and grandsons should be made to pay (the debts) even when they do not

* Page 35. take the heritage. As says *Nārada* :⁴ “If a debt which has been inherited in an uninterrupted

1. *Nārada I. 24.*

2. *Nārada I. 21.*

3. *Narada I. 22*

4. *Ch. I. 4.*

line of descent has not been paid by the sons, such a debt of the grandfather must be discharged by his grandsons. The liability ceases after the fourth (person) in descent.” Thus everything¹ is faultless.

Or, it has been said “that failing him who takes the wife,
5 the son should be made to pay.”

It has been laid down that failing the son, one who takes the wife should be made to pay. By the *rikthi* in the expression *putrahinasya rikthinhah* the wife alone is indicated. Because the text² is “She herself is considered as his property ;” as also—“He who
10 takes a man’s wife, takes his wealth.”

It may be said, the two expressions viz. “In the absence of
him who takes the wife, the son should be made

An objection. to pay the debt”, and “In the absence of a son,
he who takes the wife (should be made to pay)” —

15 are mutually contradictory. When both exist, no one should be made to pay. (To this the answer is): There is no fault here. In the absence of those who take the last *Swairini*, the

The answer. first *Punarbhû*, or a wife having considerable wealth, the son should be made to pay. And in the

20 absence of a son, he who takes a wife having no property or child should be made to pay. This very thing has been said by Nârada³:

“Of the three *viz.* he who takes the wealth, as well as he who takes the wife, and (lastly) the son, he is liable for the debts who takes the wealth. The son is liable in the absence of him who takes the wife

25 or of him who takes the wealth ; and he who takes the wife (is liable) in the absence of him who takes the wealth or of the son.” When all the three *viz.* he who takes the wealth, or he who takes the wife, and (lastly) the son, exist together, he who takes the estate becomes liable for the debt. The son, in the absence of him who takes the wife

30 or him who takes the wealth. (The words) *Strî* and *dhana* make up (the compound word) *Strîdhana*. Those who possess these (two) are (indicated by the compound word) *Strîdhaninau*. In the absence of these two *i. e.* the *Strîdhaninau*, the son alone becomes liable for the

1. This has a reference to the five points of objection stated above.

2. Narada. I. 22.

3. Ch. I, 23.

debts. In the absence of him who takes the wealth, or of the son, he who takes the wife is alone liable for the debts. In the absence of him who takes the wife, the son is liable for the debts, and in the absence of the son he who takes the wife. Thus is removed, as before, the apparent contradiction.

5

Of the clause “ Of a sonless man, those who take the heritage” (should be made to pay the debts) there is another explanation : When it is asked to whom these persons who take the wealth, or the wife, as also the son, should be made to pay, the answer is that they should be made to pay the creditor, in his absence his son &c. ; and when in the absence of his son &c. it is asked to whom should these be made to pay, this clause would have an application.

10

The expression “Of a sonless man, those who take the heritage” means this : He who is the *rikthi* i.e. a *sapinda*, or another who is entitled to take the inheritance of a creditor who has no son or other issue, should be made to pay to him—the *rikthi* (the debtor). For Nârada¹ has said :—“Whatever debt is due to a (deceased) Brâhmaṇa creditor who leaves issue is payable to the issue. If there be no issue it should be paid to his *sakulyas*, and on failure of these, to his own *bandhus* or kindred”. When, however, there are neither *sakulyas*, nor relatives, nor the kindred, then it should be paid to the twice-born. On failure of these, it should be cast into the waters.” (51.)

15

20

Viramitrodaya.

Intending to mention persons other than the sons and the like, 25 liable to pay a debt, the Author proceeds

Yâjñavalkya, Verse 51.

Putrahinasya, ‘of one without a son’, not oppressed with difficulties, possession of wealth, and competent; *rikhthinah*, ‘those who take the assets’, of the debtor, by any means whatever is to be proceeded against 30 in regard to his property which he has made his own, such a one if he is indifferent, should by a regular procedure be made to pay the wealth in the form of the debt. In his absence, one who takes over the wife of the debtor should be made to pay.

1. Oh. I. 112-113.

The use of the word *cha*, 'also', is intended to include others not (here) specified who may (be made to) pay. Thus one not oppressed with difficulties, possessing wealth, and competent, such a son, or also a son not like him, who has taken the father's entire property, is liable for the payment of his debt, as he has taken the entire estate. Thus here, the conclusion is that, in the absence of the first and the last, a son not oppressed with difficulties, possessing wealth, and who is competent, in his absence one indifferent who takes the heritage, in his absence, one taking the wife of the sonless man with property, and in his absence, 10 a son though not possessing the aforesated qualifications.

The word *eva*, 'also' is to be used after the clause 'of one without a son'. From this, it has been pointed out that the debt of one who has a competent son, should not be paid by one who takes the assets or one who takes the wife.

15 So Brhaspati¹: "The liability for the debts devolves on the successor to the estate, when the son is involved in a calamity ; or on the taker of the wife, only in the absence of the taker of the estate". Kātyāyana² also : "A son should be compelled to pay the debt, if he is free from worry, and capable of having property, and competent ; 20 otherwise a son should not be made to pay (557). Where a son is found to be overpowered with difficulties, or is a minor, the taker of the assets should be made to pay it, and in his absence, the taker of the wife (576)".

This rule of adjustment is in regard both to difficulty and equity, 25 and is also approved of the Mis'ra ; and therefore any opinion in other digests contradictory of this should not be admitted.

As regards the clause, 'of one sonless, those who take the heritage', the Mitāksharā³ explains that by this it is stated that in the place of a sonless creditor, those of the *Sapindas* who take the assets 30 should be caused to be paid by the debtor.

In the case of a taker of the wife, Kātyāyana⁴ explains : "What was contracted by the moneyless and sonless vintner and the like, that man who enjoys his wives must pay his debt" (577). By the word *ādi*, 'and the like', are to be included those who depend for their livelihood 35 upon their wives. Similarly⁵ : "Those who have gone on a long journey,

1. Ch. XI. 52.

2. Verses 557, 576.

3. p. 301. l. 5-10.

4. Verse 567.

5. Verse 575.

who have been cast off, and who bear the marks of dullness in intellect or insanity, of these even though living, the debt should be paid by those who have resorted to their wives or assets (578)."

Nârada¹: "One who is a maiden yet, not deflowered, but bearing the taint of the acceptance (only) of the hand (by the bridegroom) is termed the First Punarbhû on account of the performance of the ceremony of marriage a second time (46). Taking into consideration the usage of the country, when a woman is given in marriage to another by the elders, when she has been guilty of a crime², such a one is termed the Second (Punarbhû)³ (52). In the absence of the brothers-in-law, when a woman is given in marriage by the bândhavâs or kinsmen, to a man of the same varṇa and of the same pinda⁴, she is termed the Third (Punarbhû) (48). When a married woman, either when she has borne children, or has not had children, resorts to another man through lust, while yet her husband is living, she is called the First Swairinî (49). One who, after having left the husband of her youth and betaken herself to another man, returns to the house of her husband is known as the Second Swairinî (47). When after the death of her husband, leaving aside her brother-in-law and other relations, a woman unites herself with a stranger through love, she is called the Third Swairinî (50). One who having come from a foreign country, or having been purchased with money, or being oppressed with hunger or thirst, gives herself up to a man saying—'I am thine',—is declared to be the Fourth Swairinî (57). In regard to the one who is the last of the Swairinîs, and the one who is the first of the Punarbhûs—the debts contracted by the husbands of these, must be paid by the man to whom they resort (I. 24)". (51).

S'ûlapâni.

Yâjñavalkya, Verse 51.

Rkthagrûhah, 'Who takes the heritage,' such as the uncle &c., on account of his relationship, one who has taken the assets; such a one rnam dâpyah, 'should be made to pay the debt'. So also the taker of the wife even. The son capable of taking property and devoid of any estate;

1. Ch. XII. 46--52 ; and Ch. 1. 24.

2. i. e. adultery.

3. see note 6 on p. 798 above.

4. स्वर्णाय सपिष्टाय is the reading in Jolly, Mitâksharâ, and in both the works of Miśra. स्वर्णायसपिष्टाय would be a better reading.

who has not received the father's property; not one who has taken the father's property, such a one being included in his capacity of having taken the assets. Of one without a son, those who are competent to take the heritage, such as the uncle &c.

5 Of the taker of the heritage, or of the wife, or the son, when and by whom should be paid? So Nârada¹: "Of the three viz.: he who takes the wealth, as well as he who takes the wife, and (lastly) the son, he is liable for the debts who takes the wealth; the son is liable in the absence of him who takes the wife, or of him who takes the wealth; 10 and he who takes the wife (is liable) in the absence of him who takes the wealth, or the son." In the absence of the taker of the wife or of the heritage even by a son who is not competent may be paid; when the taker of the wife or of the heritage are available, only by a son who is competent. On this rule of adjustment Kâtyâyana² says: "A son should be compelled 15 to pay the debt, if he is free from worry; is capable of having property and is competent; otherwise, the son should not be made to pay (557). Where the son is oppressed with difficulties, or is seen to be a minor; in such a case, the taker of the property should be compelled to pay, and in his absence, the wife-taker (576)." (51).

20 While mentioning the prohibitions regarding the recovery of debts from particular individuals, the Author mentions other prohibitions.

Yâjñavalkya, Verse 52.

Among brothers, between the husband and the wife, 25 and between the father and the son, the relation of suretyship, lending, or being witnesses has not been allowed while they are undivided.

Mitâksharâ :—The relation of a surety is *suretyship*, *prâtibhâvyam*. Of the brothers, of the husband

30 The relation of suretyship, lending and being witnesses prohibited when (the family) undivided. and wife, and the father and son *while the estate is undivided, avibhakte dravye*, i. e. before the partition of the estate, the relation of suretyship, lending, or being a witness *has not been allowed, na smrtam*, by Manu and others. Nay, it has even been prohibited as there is (still) the community of wealth. As it is quite possible

1. Ch. I. 23.

2. Verses 557, 576.

that suretyship and being a witness might lead in the end to loss of money, and also as a debt requires necessarily to be repaid.

This rule (of prohibition), however, applies when there is no mutual consent. For, by mutual consent, the relationship of suretyship &c. may indeed take place even though (the members be) undivided. After partition, it takes place even though there is no mutual consent. 5

It may be said, the prohibition against the relation of suretyship &c. between the couple before partition is not

An objection. proper. As there is no (possibility of a) partition 10 between them, the qualification¹ would be meaningless. And the negation of a partition has been laid down by Apastamba² (thus) :—“No division takes place between husband and wife.”

(To this the answer is), True ; but the absence of a division 15 has a reference only to the rites which can be

An Answer. performed by means of the *S'rauta*³ and the *Smârta*³ fires and to the rewards proceeding from these (rites), and not moreover to all kinds of acts and property. For, after stating that no (division) takes place between the husband and 20 the wife , and anticipating the question ‘ Why does it not take place ’? the (same) author has thus laid down

Page 36. the reason (for this rule): “ For, from the time of marriage, they are united in religious ceremonies, likewise also as regards the rewards for works by which spiritual merit is acquired⁴ ” For i. e. since their union has been laid down in religious ceremonies beginning with the acceptance of the hand (of the bride by the bridegroom), vide the text: “ The husband and wife should consecrate the (sacred) fire.” Therefore since the two have a joint right in the consecration of the fire, they 25 30

1. viz. ‘before partition’.

2. 2-6-14—16.

3. A *S'rauta* (श्रूत) karma is that which is prescribed by the *Śruti* or *Veda*. A *Smârta* (स्मार्त) karma is that which is laid down in the *Smritis*. e. g. in the several *Gṛhya* works of each *Śâkhâ* of the several *Vedas*.

4. Apastamba 2-6-14-(17-18.)

have also a (similar) and joint right in regard to the rites which are to be performed by means of the sacred fire prepared by means of the consecration. Moreover, from the text¹: ("Let the householder perform) the *Smârta* ceremonies on the nuptial fire &c.", the two have a joint right even in (the performance of) the rites to be performed by means of the nuptial fire. Therefore in ceremonies which are independent of either of the two fires such as the *pûrta*² rites, the husband and the wife have each a right independently of one another. Moreover, the (perpetual) union of the husband and wife has been laid down in reference to (the attainment of) heaven &c. (which are) the rewards for meritorious deeds. Vide the *S'ruti* text³: "May you (two) start an imperishable body in the heaven" &c. Thus it should be understood that the union of the two exists in reference to those acts (only) for which they have a joint right, and not, moreover, in the rewards also of those performed with the husband's permission such as *pûrta*.

It may be said that the jointness (of husband and wife) has been laid down even, in connection with the ownership over wealth vide the text⁴ :—"And with respect to the acquisition of property. For they declare that it is not theft if a wife expends money on occasions (of necessity) during her husband's absence."

(To this the answer is), True ; but this text has indicated the ownership of the wife over wealth, and not an absence of a division &c. Since after stating "With respect to the acquisition of property" the Author⁵ has mentioned the reason of the rule (stated) there. Thus, it means, that since **Manu** and others do not declare it to be theft in cases where in the husband's absence, the wife spends on special and necessary duties such as offering a meal or

1. *Yajñ. I. 97.*

2. *Pûrta*—पूर्ते—as opposed to and contradistinguished from इष्ट. See further on Mitakshara Sk. p. 81. 1. 1-2. An इष्ट Karma has been thus defined:—अथिहोत्रं तपः सत्यं वेदानां चैव पाठनम् । आतिथ्यं वैशदेवश्च इष्टमित्यभिधीयते ॥ While a पूर्ते Karma has been thus defined:—वापीकृपतडागादि देवतायतनानि च । अन्नप्रदानमारामः पूर्तमित्यभिधीयते ॥

3. Taittiriya Brâhmaṇa III. 7-5.

4. Āpastamba 2. 6. 14. (19. 20.)

5. i. e. Āpastamba.

alms to a guest, therefore the right of ownership over property exists in favour of the wife also. Otherwise it (*i. e.* her act) would be theft. Therefore a wife also may have a share at the option of the husband and not of her own will. As the Author (*himself*) says further on¹: “If he make the allotments equal, his wives should be given equal shares.”

Viramitrodaya.

In the chapter on payment of debts, in the portion stated with the text ‘Debt which may be paid, and which may not be paid &c.’, while stating to whom it may not be paid, in that connection, the Author states other prohibitions also in that place

Yājñavalkya Verse 52.

In the word *avibhakta*, ‘undivided’, the past participle (*kta*) is used in the abstract² sense. Therefore, when there has been no separation, *bhrātrnām*, ‘between brothers’ mutually, *dampatyoḥ*, ‘between a couple’ *i. e.* a husband and wife, as also between a father and son, *prātibhāvyam*, ‘the relation of suretyship’, *i. e.* bail, *rṇam*, ‘lending’ *i. e.* giving of a loan, *sākṣyam*, ‘being witnesses,’ (position of a witness), for establishing a point in dispute, *na smṛtam*, ‘has not been allowed’ *i. e.* is not approved of the *Smṛtis*.

The word *atha*, ‘or’, is indicative of the inclusion of the paternal uncle, brother’s son, and like others. The word *cha*, ‘and’ indicates the inclusion of re-united relations. The word *tu*, ‘however’, indicates the non-application of this rule in the case of consent or in regard to extraordinary things. Thus when the other party is agreeable for a suretyship or to the testimony, then the son &c. can become a surety, as also a witness for the father and the like. In the case of *Saudāyika*³ articles, even when not separated, mutual transactions may take place.

After partition, however, the relation of suretyship may certainly exist, it has been expressly stated—‘when unseparated’, and also as there could be no objection. In the case of suretyship and being witnesses other particulars will hereafter be mentioned (52).

1. *i. e.* Yājñ. II, 115.

2. भावे क्तः *i. e.* in a state or condition of separation.

3. सु दाय—affectionate gifts received individually. These do not become part of the family property, but are owned by the donee as of their personal right.

S'ūlapāni

Yājñavalkya, Verse 52.

The meaning is plain. Nārada :¹ “(The acts of) giving evidence, of becoming a surety, of giving and of taking, may be mutually performed by divided brothers, but not by unseparated ones.” (52),

THE LAW OF SURETYSHIP

Now the Author proceeds to consider the law of suretyship

Yājñavalkya, Verse 53.

For appearance, assurance, and for payment
10 is suretyship ordained. The first two, however, should be made to pay in case of default, while in the case of the last, the sons even (should be made to pay).

Mitākṣharā :—*Prātibhāvyam, suretyship*, is a ‘contract with another person with the object of creating
15 Suretyship is confidence.’ That, moreover is divided threefold three-fold. according to the difference in the subject-matter ; e. g. *dars'ane*, for appearance, viz. with the words “whenever his appearance is necessary, I shall produce him” ; *pratyaye*, by way of assurance, e.g. confidence i.e. “upon my assurance
20 lend him money, he will not deceive you. Since he is the son of such and such a person, or he possesses a very fertile land, or possesses an excellent village” ; *dāne*, for payment, e. g. “If he does not pay, then I myself will pay.” Thus is suretyship ordained. (this) clause is to be taken along with each.

25 *Ādyau tu*, the first two however, i.e. the sureties for appearance and of assurance ; *vitathe*, in case of default, i. e. if things turn out otherwise, that is to say in case of non-appearance or a breach of the assurance ; *dāpyau*, should be made to pay, i. e. the amount at

1. Ch. XIII. 39.

issue, to the creditor by the king ; itarasya, *in the case of the last*, i. e. of the surety for payment, even the sons should be made to pay¹.

By default, vitathe, is meant when the debtor evades payment either fraudulently or by (pleading) poverty. By saying 'in the case of the last even the sons', it has been (impliedly) said that the sons of the first two should not be made to pay. By mentioning 'the sons' it has been indicated that grandsons should not be made to pay. 5

S'ûlapâni.

Yâjñavalkya, Verse 53

10

Suretyship has been ordained in regard to three *viz.* appearance etc., *Âdyau* 'the first two', i. e. the sureties of appearance and of assurance, on a non-observance of the condition should be compelled to pay. In the case of the surety for payment, the sons also must be made to pay. So Brhaspati²: "For appearance, for assurance, for payment, and also for delivering the assets of the debtor : it is for these four different purposes that sureties have been ordained by sages in the system (of law) (39): One says, 'I will produce (him)'; another says, 'He is a respectable man'; the third says 'I will pay the debt', and the fourth says 'I will deliver his goods' (40). The first two, on a failure of the promise, shall be made to pay immediately the amount; while the two last, on a breach of the engagement (by the debtor); and in their absence, their sons also." (41). [53]. 15 20

With a view to make this very thing clear, the Author says

Yâjñavalkya, Verse 54.

Where a surety for appearance dies, or also a surety by assurance, the sons of such a one must not pay the debt; (but they should pay) in the case of a surety for payment. 25

1. In the case of a surety for payment, the sons are liable. *Thangathâmal vs. Arunachalam* 41 Mad. 1071. and this liability is independent whether any consideration was received by the father. *Dwarka Das vs. Krishna Das* 55 All. 675.

2. Ch. XI. 39-41.

Mitâksharâ :—When darsana-pratibhûh, a surety for appearance, prâtyayiko wâ, or a surety by assurance, mrtah, dies, i. e. goes to heaven, then Sons of a surety for appearance need not pay the debt. 5 the sons of these two must not pay the paternal debt which has been incurred as a surety. Where, however, dânaya sthitah, a man standing surety for payment, dies (pratibhûh), tatputrâ dadyuh, his sons should pay, (and) not the grandsons. And these too should pay the principal amount only, not the interest; *Vide* the text of Vyâsa 10 viz.: “A grandson should pay the debt of the grandfather, as also a son that which is incurred as a surety, equal (in amount) to the principal only ; their sons, moreover should not pay. This is (the) fixed (rule).”

A grandson should pay his grandfather's debt excepting 15 that which was incurred under a suretyship, * Page 37. equal in amount, i. e. as much as was taken, and not the interest. Similarly the son also (i. e. of the debtor) should pay his father's debt incurred as a surety equal only to the principal amount. The sons of these, 20 i. e. of the son and the grandson, i. e. the grandson and the great-grandson, should not be made to pay a surety-debt or even a debt which is not a surety-debt respectively when they have received no property.

As for the text¹: “If the debtor is moneyless, and the surety 25 possesses wealth, he shall be liable to pay the principal ; he should not pay interest,” that too should be explained as follows :—*Lagnakah* is the surety, *Khâdakah*, is the debtor. If a *lagnaka* dies possessed of wealth, then only the principal amount should be paid by his son, not the interest.

Where a surety for appearance or a surety by assurance has 30 stood surety after obtaining a sufficient pledge, there even his sons should pay the surety debt out of that very pledge. As says Kâtyâyana³: “Where a man stands surety for appearance after

Of Hârî. see Smrtichandrikâ p. 15^ l. 11.

obtaining a sufficient pledge from the debtor, his son shall be compelled to pay the debt from it in the¹ absence of his father." The use of the word *assurance* indicates by implication (also)² appearance. *In the absence of the father i. e.* when the father is dead or has gone to a distant region.

5

S'ūlapāṇi.

Yājñavalkya, Verse 54.

This verse is for the purpose of ordaining payment by the sons of the surety for payment only; and thus there is no repetition, so Kātyāyana³: "A surety obligation is never to be paid by the grandsons; by the son even an equal amount is to be paid, in all cases of a paternal debt". (54).

10

Where there are more sureties than one, (a question would arise) how should the debt be paid? So the Author says

Yājñavalkya, Verse 55.

15

When there are more sureties than one, they should pay an amount proportionate to their shares. But when they are bound jointly and severally, they may pay according to the choice of the Creditor.

Mitāksharā :—If in one transaction, there are two or bahavo, *more sureties*, then they should divide the debt and (each) should pay proportionately to the share (of each). **Ekachhāyāśriteshu**, when sureties are bound jointly and severally the (*Chhāyā*) image i. e. the resemblance of one i. e. of the debtor. (Those) whose liability is determined by it are known as *sureties bound jointly and severally*. As the debtor stands liable for paying the whole amount, so also are the sureties for payment bound jointly and severally to pay the entire amount.

20

Mode of payment of debt when there are several sureties.

25

the debt and (each) should pay proportionately to the share (of each). **Ekachhāyāśriteshu**, when sureties are bound jointly and severally the (*Chhāyā*) image i. e. the resemblance of one

i. e. of the debtor. (Those) whose liability is determined by it are known as *sureties bound jointly and severally*. As the debtor stands liable for paying the whole amount, so also are the sureties for payment bound jointly and severally to pay the entire amount.

In this way when there are sureties for appearance or by assurance, as also those who are bound severally they should pay

30

1. 'विना प्रिव्यात्' is another reading—which would mean 'even when the son has not received assets from the father.'

2. i. e. the mention of the surety for appearance includes the surety by assurance,

3. Verse, 561.

according to the choice, yathākāmam, i. e. according to the wish of the dhanikah, i. e. the creditor. And hence, whomsoever the creditor asks, having regard to his wealth &c., that one should pay the whole amount and not a portion.

5 Of those who are severally bound, if any one has gone abroad and his son is near, then he should be made to pay the whole according to the option of the creditor. When, however, he is dead, his son should be made to pay to the extent of his father's share without interest. As says Kātyāyana¹: "Of sureties jointly and

10 severally bound, any one who is available may be made to pay. In his absence abroad his son should be made to pay the whole. But if he be dead, his son should be made to pay equal to the share of the father."

S'ūlapāni.

15 Yājñavalkya, Verse 55.

In regard to a debt, where the sureties are limited by portions, there in the absence of the debtor, they should pay the portion of each his own.

When sureties are bound as responsible for the debtor singly, the creditor may, at his option, recover the entire debt from one surety
20 alone (55).

Having stated the law relating to the payment of debts under a contract of suretyship, the Author states the law as to the recovery of the amount paid by the surety

Yājñavalkya, Verse 56.

25 For a debt which a surety has been made to pay publicly to the creditor, double that amount becomes repayable to him by the debtors.

Mitāksharā :—The amount which, yad, the surety pratibhūh, or his son being harassed by the creditor, is publicly, prakāsam, i. e. in the presence of all the people, made to pay, dāpito; to the creditor, dhanino; by the king, and not which he has made voluntarily by going to him out of a craving for a double amount. As says Nārada²: "What-

1. Verse, 538.

2. Ch. I. 121.

ever amount the surety shall pay when harassed by the creditor, the debtor shall pay double the amount to the surety"; ḫnikaiḥ, i. e. by the debtors; tasya, of him, i. e. of the surety; dwigunam, a double, pratidātavyam, becomes repayable. That, moreover, should be paid forthwith without waiting for any particular time, because that is the force of the text. This, moreover, has a reference to money (only). 5

It may be said that this text¹ regarding sureties lays down a rule as to the double (payment)² only. And this An objection rule is deducible even without prejudice to the one previously³ laid down i. e. (about the increase) which indicates the (several) periods of time. Just as the rule⁴ regarding the performance of the ritual for the birth (of a

1. i. e. Yājñ. II. 56.

2. And not that the double is payable at once.

3. i. e. Yājñ. II. 37-39.

4. The Jātēshṭi Nyāya (जातेष्टिन्याय) is mentioned by Jaimini in Sutras 38-39 of the third Pāda of the fourth Adhyāya. The discussion in this Nyāya turns upon the question whether the जातेष्टि (Jātēshṭi) should be performed before or after the जातकर्म (Jātakarma).—The पूर्वपक्ष maintains that it should be performed immediately after the birth of the child, but the सिद्धान्तिन् says it should be after the जातकर्म, and the conclusion is to the same effect.

The relevancy of this discussion here will be seen thus: The जातेष्टिन्याय lays down in substance the general rule of interpretation that where there are two rules and they refer to the same subject-matter, they should be so interpreted and applied as to avoid as far as possible the fault of incongruity (see for a fuller discussion the सुबोधिनी Text p. 32 & Trants. pp. 76-80 and ब.लंभट्टी on verse 56). In the present case the application of the न्याय is invoked in this way by the पूर्वपक्ष (objector). Yājñavalkya in verse 37 lays down the rule about the periods of time when interest is allowed to accumulate. In the present verse (i. e. 56) the rule laid down is that a surety who is compelled to pay is entitled to a double. Therefore the suggestion in the पूर्वपक्ष is that the rule in verse 56 should be taken as subject to or *without prejudice* (अवाध) to that in verses 38 and 39, so that the double that the surety is entitled is not payable *at once* but subject to the conditions laid down in verses 38 and 39. This position has been refuted by the सिद्धान्तिन् and the conclusion arrived at is that the double that is due payable to the surety under this verse is payable *at once* (सद्य एव द्वैगुणं दातव्यम्). Note the following extract from the Subodhini. प्रकृते त्वेवमुपयोगः । यथा शुद्धकालरूपं अचाधित्वैव जातेष्टिविधानं, तथा 'अशीतिभागो वृद्धिः स्यात्' इत्यादिना पूर्वोक्तो यः कालकमेण वृद्धिकमः तमचाधित्वैव द्वैगुण्यविधानम् । अतश्च न सद्यो द्वैगुण्यमेति । and there he states conclusion अतश्च पूर्वमपासं यत्स्यो द्वैगुण्यं तदेवावश्यं विधेयम् । (P. 32 a l. 15. Eng. Trs. p. 78 l. 28 and p. l. 15.

child) is (understood as being) laid down (to be) without prejudice to the rule about (the period of) impurity. Moreover, if it (*i. e.* the rule) is understood as laying down an immediate increased payment,

it being impossible for an immediate (increase)

5 * PAGE 38. *i. e.* a calf in the case of the female of a beast, it carries us to the payment of the original principal alone.

(To this the answer is) This is wrong. The present text would be meaningless if it is understood as

10 The answer laying down a rule as to the doubling only (of the principal), since the rule as to the doubling (for the principal) by regard to the periods of time has already been established by the text¹: "Of cloth, grain and gold the utmost increase is fourfold, threefold, and twofold." As for the 15 female of a beast, even under the rule of increase by lapse of time, if there is no progeny, the beast alone is to be returned. Moreover, even when some time after the payment of the amount the surety comes to an agreement with the debtor, it is possible to have the progeny then, or he may return the female beast along with the 20 progeny already born before. So there is no force in this objection.

Again, a surety-debt² is a debt, which is incurred voluntarily, and the payment made by the surety is therefore necessarily a voluntary payment. And there is no interest allowed for a voluntary payment before a demand. As has been said:³ "A friendly loan 25 does not carry interest when no demand is made. If it remains unpaid on being demanded, it carries interest at five per cent." Therefore this text lays down that this debt which originates in a voluntary payment (by the surety) even though undemanded⁴ would

1. Yâjñ. II. 39 see above p. 769.

2. Here there is an attempt at a *pun* upon the word प्रीतिदत्त. The compound is to be solved as प्रीत्यै दत्तं—given for the pleasure of the payee and not (प्रीत्या) of the payer. The fallacy is best exposed by taking the original word प्रीतिदत्त as it is. In Sanskr̥t it may mean "something given for pleasing another" or it may mean a friendly loan—as it is technically understood in the text cited from Nârada. The ground for the objection stated in the text, is supplied by the ambiguous middle प्रीतिदत्त.

3. By Nârada I. 109.

4. *i. e.* By the surety.

(at the most) increase in course of time as far as double, commencing from the day of the payment, is what is (intended to be) stated by this text.

This also is wrong. Such a conclusion cannot be drawn from this text. The only inference deducible is that a double should be repaid. Therefore, what has been said above is proper *viz.* that having regard to the force of the text the double should be repaid without regard to the rule as to the periods of time. 5

Sûlapâñi.

Yâjñavalkya, Verse 56.

10

Where the surety or his son has been compelled by the creditor to pay the amount, to him the debtors should pay double the amount.

By what time such double becomes payable, has been stated by Brhaspati¹: "When a surety pays on a demand (an amount) which has been vouched for, after the lapse of three fortnights, that amount 15 (the debtor) is bound to pay" (56).

The Author mentions exceptions to the rule as to a double payment to the surety which has been laid down (above) as a general rule

Yâjñavalkya, Verse 57.

20

Progeny in the case of female beasts, three-fold in the case of corn, four-fold in the case of cloth, and eightfold in the case of liquids².

Mitâksharâ:—Like the double, in the case of gold, the female beasts &c. should be caused to be returned with interest as declared above without regard to (the rule as to) time. As for the verse itself³, it has already been explained. The purport is that whichever limit has been laid down as the highest (increment) for each particular thing, with that increase it should be paid at once by the debtor to the surety who has paid (the principal), and without 30 waiting for any particular period. 25

1. Oh. XI. 44.

2. *i. e.* are allowed to a surety who has paid the debt on account of the principal debtor.

3. *i. e.* of Yâjñ. v. 57.

When, however, a surety for appearance is unable, at the appointed time, to produce the debtor, then a three fortnight's time should be allowed to him for finding out the debtor. Then if he produces him, he should be released¹, otherwise he should be made to pay the amount in dispute. *Vide* the text of Kātyāyana²: "As for finding out an absconding debtor, time should be given to the extent of three fortnights as the farthest limit. If during that time the surety point him out, the surety should be absolved. If (however) the surety do not point him out after the lapse of the time allowed), he should be made to pay the amount guaranteed. This is also the rule when he (*i. e.* the debtor³) is dead."

The same writer⁴ has also laid down the rule prohibiting particular persons from becoming sureties: "Not the master, nor an enemy, nor one holding a power from the master; nor one under restraint, nor a convict, nor even one (who is) of a doubtful character; nor also an heir, nor a friend, nor the resident student, nor one engaged on a commission from the king, nor also those persons who have entered the fourth⁵ order, nor one who is not competent to pay (the amount to) the creditor and an equal amount to the king as a fine, nor one whose father is living, nor a wayward, nor one who is not (properly) known, should be accepted as a surety guaranteeing performance by himself". Sandigdhal, *one of a doubtful character*, ABHIS'ASTAH, *i. e.* one upon whom hangs an accusation. Atyantavāsinah *resident students*, *i. e.* students leading a celibate life and specially known as Naishṭhika brahmachārinah⁶.

Here ends the law as to sureties.

Viramitrodaya.

In regard to a transaction with surety, the Author states special rules.

1. From his liability as a surety. 2. Verses, 532, 533.

3. See Bālambhaṭṭi.

4. Kātyāyana Verses, 114, 115, 116.

5. *i. e.* the last of the four stages of life according to the Aryan law viz. ब्रह्मचर्य, गार्हस्थ, वानप्रस्थ and संन्यास. The life of a celibate, householder, hermit, and an ascetic.

6. See Yājñ. I. 50 and Mitāksharā thereon pp. 792-794.

Yājñavalkya, Verses 53, 54, 55, 56, 57.

Dāne, 'for payment, i. e. making payment himself, by recovering from the debtor and making over.'

Moreover, Brhaspati¹ makes this clear: "Now, one says 'I will produce (this man)'; another says, 'He is a respectable man'; the third says, 'I will pay the debt'; and yet another says, 'I shall deliver the goods.' (40). The first two however, on a failure (by the debtor in his engagement) should be made to pay the amount advanced at the time; the last two also, on a breach of the engagement (by the debtor), and in their absence, their sons also. (41)".

He who says, 'I shall produce before you the man proceeded against' he is one kind of surety. In this way is to be connected further on also. 'I shall pay', so says another; thus is it to be connected. In the expression *Ādyau tu* 'the first two, however', by the use of the word *tu*, 'however', it has been indicated that of the first two kinds of sureties, sons must not be made liable to pay. 'On a failure', i. e., when there occurs a discrepancy in the matter of the appearance or the gooduess vouched for, the sons also shall be compelled to pay. This construction follows from the consequential change in the case inflexion. By the use of the word *api*, 'also' are included the sureties for payment.

The author of the *Mitāksharā* says that the Author further expounds what has already been stated before. As a matter of fact, however, the rule stated in the first² verse relates to sureties when living; the word *itarasya*, 'of the other' meaning of the one gone abroad, and for a surety who is dead, the rule is stated in the second verse, and thus there is no repetition. This is the principle.

Those who stood sureties for payment, their sons should pay; this is the construction.

Bahava iti. If there are several sureties then they should pay upon a non-payment by the debtor, such portion of the amount of the debt as is proportionate to the fraction agreed to by each. Where a particular fraction has been fixed by an arrangement, there the adjustment is to be made under the rule³: 'Equal shall be where no specification has been declared.' The word *bahavah*, 'several' is indicative of more than one; therefore it should be noted that where there are two sureties, there also this arrangement holds.

1. Ch. XI.—40, 41.

2. i. e. Verse 53.

3. समं स्याद्भुतित्वात् is the full statement of the rule. Where no portion has been expressly specified, there the shares shall be equal.

See Jaimini X. III. 53-54. This is the 13th *Adhikarana* which has been stated thus:—

स विभागः समो नो वा विशेषाथवणात्समः । वैषम्यं स्याद्यथा यासमेवं तत्प्राप्तमाख्यया ॥ २३ ॥

This maxm is illustrated in the *Parīśiṣṭā* to the *Pāraskira Grhya Sūtra*, where oblation to the several deities are prescribed—As no number is specified, one for each equally is the inference,

Among these sureties, *ekachhāyāśriteshu*, ‘those who are bound jointly and severally’, *dhanikasya*, ‘of the creditor’, *yathdruchi*, ‘according to (his) option’, in accordance as he desires, *dadyuh*, ‘should pay’. *Ekachhāyā*, ‘one image’, i. e. having one entity in the matter of the payment of the entire debt, under an agreement with the creditor insisting thus: ‘I shall recover from any one I choose’, and accepted by the sureties. In this form, by the sons of the sureties also who could be pursued for the payment, must be paid what their father was liable to pay, but without interest; this has been stated before. (55).

10 The Author mentions the rule regarding repayment by the debtor of the amount paid by the surety, *pratibhārdāpita iti*, ‘which a surety has been made to pay &c.’, that amount, which the ‘surety’, *pratibhāḥ*, *prakāśam*, ‘publicly’, i. e. in the presence of witnesses, by the king and the like, has been compelled to pay in regard to the creditors, that becomes 15 payable in double quantity by the debtors to the sureties. This, moreover, is to be observed at the time proper for the increase by double. (56).

20 The interest is to begin to run three weeks after the payment made by the sureties, vide this text of Brhaspati¹: “One who being under a surety obligation, pays when pressed as a surety (by the creditor), after three fortnights, that amount he is entitled to receive in double”. So also any other amount spent by the surety in connection with the suretyship, must be paid by the debtor, as says Kātyāyana²: “Whatever has been paid by one on account of another, when pressed by the creditor, and proved by witnesses, that amount the surety should recover”.

25 Of the rule stated above as to the doubling, the Author mentions an exception: *Sasantatiḥ*³, ‘together with the progeny’. A woman, and a beast together make the compound word ‘females and beasts’; that given by the surety together with the progeny viz. at the time of the transfer, as much progeny is born, along with that the debtor should 30 pay to the surety. This is the meaning. The word progeny is also indicative by implication of labour according to the usage of the time.

In the Mitāksharā the reading is *santatiḥ stripaśāshwera*, ‘progeny itself in the case of female beasts’. Its meaning is, that in the case of female beasts, the progeny is interest which was agreed to between 35 the debtor and the creditor, that should be made over to the surety by the debtor.

1. Oh. XI. 44,

2. Verse 540.

3. *Mitramiśra* and *Śulapāni* read ससन्ति खीपशेवं for सन्तिः खीपशुच्चेव in Verse 57.

Dhānyamiti, ‘corn &c.’, where, whichever is the highest interest, there that together with the amount of interest should be paid to the surety, is the collective sense. By the use of the word *eva*, ‘only’, is excluded the calculation of any more interest. By the use twice of the word *cha*, ‘and also’, are added five-fold in the case of corn only, and in the case of trifles (the rate of) increase is not stated here. (53-57). 5

S'ūlapāṇi.

To this, the Author mentions an exception

Yājñavalkya, Verse 57.

A woman and a beast, make up (the compound) ‘a woman and the beast’; debt in the form of these is ‘women and beasts’. Where women slaves, or she-goats etc. have been recovered by the creditor from the surety, there, the surety should recover from the debtor, the women slaves, or the she-goats etc. together with the progeny also. Grain etc. as stated before. All other things at double. (57). 10 15

THE LAW OF PLEDGES.

In a loan transaction of money, the guarantee to be offered to the creditor is two-fold *viz.* a surety and a pledge. As says Nārada¹: “The guarantee to be offered to the creditor is two-fold; (*viz.*) a surety and a pledge.” Of these (the law as to) surety has been dealt with. Now the pledge is being described. *Ādhī*, *p'edge*, is that which is deposited *i. e.* hypothecated

The law of pledges. by the debtor with the creditor for the sake of (creating) confidence for the amount borrowed, (that) is an *A'ḍhi*. That moreover, is two-fold : 25

Kṛtakālāḥ, a pledge with a time-limit, and *Akṛtakālāḥ*, a pledge with no time-limit. Each of these again is two-fold: A pledge for custody, and a pledge for use. As says Nārada²: “A pledge is that which is deposited and is known to be of two kinds; one for (the redemption of) which a time limit is fixed, and the (other) 30 which is to be retained until payment”. Again, it is said to be two-

1 Ch. I. . . 7.

2. I. 124 Dr. Jolly translates thus: “That to which a title is given (*adhikriyate*) is called a pledge.

fold ; a pledge for mere custody, and a pledge for enjoyment. 'At the period fixed' i. e. at the time of the loan
Kinds of pledges. itself. e. g. (with the word) at such and such a
time e.g. at the illumination festival—this pledge is

5 to be redeemed by me, otherwise it will become yours. At the time thus appointed (it is) to be taken away, i. e. to be taken near him—in other words—to be redeemed. *Deyam*, 'what is to be given', means (the act of) giving. 'Until payment.' *yāvaddeyam*, means without prejudice to the *Devam*. *Udyataḥ*, means fixed
10 * PAGE 39. *i. e.* appointed. *Yāvaddeyodyataḥ*, 'fixed until payment' means the time for which is the interval for the repayment of the borrowed amount, *i. e.* for which the time has not been fixed. For safe custody *i. e.* for being preserved.

Yājñavalkya, Verse 58.

15 A pledge lapses if (it is) not redeemed by the time the principal amount is doubled; that with a time limit, (lapses) by (the lapse of) the time; a usufructuary pledge never lapses.

20 Mitākṣharā:—If, *yadi*, *i. e.* when, *dhane the amount*, lent becomes double in course of time with the addition of interest as fixed by himself, *na mokṣhyate*, (the pledge) is not redeemed by the debtor by the payment of money, then it lapses. *i. e.* the property of the debtor becomes the lender's own. *kālakṛtaḥ*, with a time-limit.

25 Special rules about the pledge & its four kinds described above. The word *kāla* has been placed first under the rule of grammar in *Ahitāgnyādīshu*¹—“in (the compounds) *Ahitāgni* and the like, the words formed by the past passive participial terminations may be placed optionally at the beginning or end.” That, moreover, 30 *nas'yet, will lapse*; *kale*, when the appointed time is reached, whether before or after it is doubled. *phalabhogyaḥ*, *usufructuary*, is that where the profits are to be enjoyed, (e. g.) field, garden &c. That, *na nasyati*, does not lapse, at any time. By the text; “At

1. Vyākaraṇa Sūtra 2-2-37 ‘वाहिनाम्य देषु.’

the time fixed, that with a time-limit lapses' the lapse of both kinds of pledges limited in time—viz. for safe custody and for enjoyment has been laid down. The absence of a lapse of a pledge without a time-limit has been stated in the text: "a usufructuary pledge does not perish." Therefore by 'the rule of the remainder' the text *viz.*: "A pledge would lapse¹ &c." comes to be in reference to the pledge for safe custody, and not to one having a time-limit.

When a lapse occurs whether on account of the transgression of the rule of doubling or by the violation of the condition as to the time fixed (by the parties), a fourteen day's waiting time should be observed—*widē* the text of Br̥haspati² *viz.*: "When gold is doubled or the stipulated period has elapsed, the creditor becomes the owner of the pledge after waiting for twice-seven days. During this period the debtor may redeem the pledge by paying the amount".

It may be said 'it is improper to say that a pledge shall lapse' in the absence of circumstances such as gift, sale &c. which (would) cause a cessation of the debtor's ownership, as also in the absence of circumstances which would create the creditor's ownership, such as acceptance, purchase &c., and also because there would be a disagreement with the text of Manu³: *viz.* "Nor, moreover, can there be a transfer or sale of a pledge on account of length of time." *Kâlasamrodha*—'Accumulation on account of time'—(the pledge) standing over for a long time. On account of the *Kâlasamrodha* *i. e.* the debt remaining over for a long time, there *cannot be a transfer* (*na nisargosti*) of a pledge, *i e.* there cannot be hypothecation with another, *nor also a sale* (*na cha vikrayah*) Thus from the prohibition against hypothecation or sale (of a pledge) an absence of ownership of the creditor is deduced. (To this) the answer is: Even the act of pledging itself is considered as a circumstance, although coupled with a contingent condition, creating the creditor's ownership. The acceptance of a pledge also is well known in the world as a circumstance, also coupled with a contingency, creating the creditor's ownership. So when the amount becomes doubled, and also when the appointed time has arrived, the right of paying

1. *i. e.* the first half of verse 58.

2. Oh. XI. 27.

3. Oh. VIII. 143.

the amount becomes entirely extinct, and therefore under the present text¹ there occurs an entire cessation of the debtor's right of ownership, and the ownership of the creditor becomes absolute. Nor, moreover, is there a conflict¹ with the text of Manu². For, 5 the text : "Nor, moreover, can there be a transfer or sale of a pledge on account of length of time" has been stated after introducing a pledge for enjoyment thus: "Nor, however, can he get interest on the loan when the pledge is for use". And there being a prohibition against hypothecation or sale in the case of a pledge for use and 10 enjoyment, the creditor cannot acquire ownership. Here also it has been said, viz.: "one for enjoyment of profits does not lapse."

In the case of a pledge for custody, however, Manu³ has stated (the rule) separately : "A pledge (for custody only) must not be used by force ; (and) one (so) using it shall forfeit the interest." 15 Here also it will be said hereafter⁴: "There shall be no interest if a pledge for safe custody is used." The text : "A pledge when doubled lapses" has been stated with reference to a pledge for custody. Thus everything is without a contradiction.

Viramitrodaya.

20 ' Every month in the case of a pledge ', so has been stated⁵; there in regard to pledges, the Author states special rules upto the end of the chapter

Yājñavalkya, Verse 58.

25 There, a pledge is of four kinds, as differentiated by the several elements of character, kind, time-limit, and form. So also Brhaspati⁶ : "A pledge is termed *bandha*, and is declared to be of four sorts ; movable or immovable ; to be kept only, or to be used ; to be released at any time, or limited as to time ; stated in writing, or stipulated (orally) before witnesses". By reason of its being indicated as to its four-fold nature 30 by regard to its character, etc., such as the four kinds such as movable, immovable, etc., and thus of four kinds. ' Stated in writing ', i.e., having an evidentiary support stronger than witnesses. Other texts,

1. i. e. of Yājñavalkya.
2. VIII. 143 i. e. the one referred to above.
3. Ch. VIII. 144.
4. Verse 59 further on.
5. Verse 37 above see p. 763, l. 26.
6. Ch. XI. 17.

however, are to be interpreted as not to contradict this; this is in short the import.

If after the principal amount has become doubled it is not redeemed by the debtor, then the right of the debtor lapses. *Kālakṛtah*, ‘that with a time limit’, i.e., one for which a period has been fixed, i.e. ‘if by such and such a date the pledge is not redeemed by me then it becomes your property by right of ownership’, thus with a time limit agreed upon. A pledge to be used or for custody only of this sort; *Kāle*, ‘at the time’, i.e., at the time fixed in that manner, upon the debtor not making the payment back of the debt, *naśyet*, ‘shall lapse’, i.e., will be removed out of the ownership of the debtor. This is the meaning according to the *Mitākṣharā* and others. 10

The revered Author of the *Ratnākara*, however, maintains that this text is to be differently interpreted: as in the case of transactions—such as regarding bronze, etc., where no agreement was made, there, without the consent of the debtor, dealing with the property as his own by the creditor is not seen generally. That interpretation is thus: where the debtor himself stipulates by a declaration thus, ‘When the amount becomes doubled and I do not redeem the pledge, then this (pledged article) will indeed be yours’, then after the amount has become doubled and no redemption has taken place, the right of the debtor becomes extinct. Here the reason is *Kālakṛtah*, ‘with a time-limit’—where a time has been fixed at which one’s ownership will become extinct and the right of ownership of the creditor will spring up—such a pledge becomes lapsed by the time fixed. 25

A pledge with possession for the enjoyment of the fruit, however, where no time is fixed, does not lapse even by thousand years. ‘When it becomes double, it has to be redeemed by me’ with such an agreement finally made where a pledge was deposited by the owner, i.e., a pledge for custody, such a pledge, when the amount has become doubled and is not redeemed, lapses. Double is indicative of the highest limit of the increase. 30

A pledge for possession, however, although thus stipulated for, if it becomes doubled on account of depreciation or investment, does not lapse even if not redeemed. *Kālakṛtah*, ‘with a time limit’ i.e., where a time limit has been made, such as, ‘within such period if it is not redeemed, then it will be yours indeed’, and the like stipulation, when not redeemed, the entire pledge lapses. Thus the clause ‘when the amount is doubled’ should be taken as stated. In the case of a conflict with the usage of the *S'ishīdas*, however, it should be taken as 40

824 *Viramitrodaya, S'ulapāṇi, & Mitākṣharā—Pledge for custody.* [*Yājñavalkya*
Verses 58-59.]

indicative by implication of a particular period of time... Such an interpretation, moreover, appears to be better.

In regard to the expression *prañasyet*, 'lapses', Br̥haspati¹ states a special rule: "When the time (for payment) has passed, and interest has ceased, the creditor shall become the owner of the pledge ; but before ten days have elapsed, the debtor is entitled to redeem it". Vyāsa also, "When gold has become doubled on account of the completion of the time in the stipulated period, the creditor becomes the owner of the pledge, after waiting, however, for two weeks." Here the decision is to be reached according as the debtor is well placed or is not well-placed. (58)

S'ulapāṇi

Yājñavalkya, Verse 58.

After the amount has become doubled if the pledge is not redeemed by the debtor, then it lapses e. g. it becomes the property of the person advancing the amount. If a period of time has been stipulated by himself, then when that is reached, it lapses. Vyāsa states a special rule : "After gold has become doubled, by the completion of the interval under the stipulated period, the creditor becomes the owner of the pledge, after waiting, however, for three weeks ; during this interval, the debtor may 20 redeem the pledge by paying the amount". (58),

Yājñavalkya, Verse 59.

There shall be no interest if a pledge for custody be used, or one for use be damaged. If a pledge is spoiled or destroyed it shall be paid, unless it be by the act 25 of God or the King.

Mitāksharā:—Moreover, *gopyādheḥ*, of a pledge for custody,

e. g. a copper pan, there shall be no interest in * Page 40. case of any use (made thereof). Although

the use be slight, even a large (amount of) 30 interest would be forfeited, as there is a breach of contract. So also, where the pledge is for possession and use, and the object of enjoyment, such as a bull or a copper pan, which is pledged with interest is damaged i. e. has been rendered unfit for (being dealt with in) any transaction, there is no interest. This is the context.

1. Ch. XI. 25.

A pledge which has been *spoiled*, *nashtah*, i. e., has undergone deterioration e. g. a copper pot &c. on account of a hole or on account of its being broken &c. should be made as (it was) before and returned. Here a pledge for custody, if damaged, should be returned after it is restored to its former condition. And if it is used also, even the interest shall be forfeited. 5

A pledge for use if *spoiled* should be made as (it was) before and (then) returned. If it carries interest, the interest should be given up. When it is destroyed i. e., has perished entirely, such a one also should be paid by paying the price. By paying it, he gets the amount with interest. When he does not pay then (even) the principal amount lapses. *Vide* the text of Nārada¹:—"If it is destroyed, the principal lapses unless the loss is caused by fate or the king." Unless it be by fate (superior force) or the king; fate, Daivam, i. e., fire, water, and generally any misfortune &c. Unless it be without the loss caused by superior force and also by the king when it is without any fault on his part. In case where the destruction is caused by fate or the king, the original principal with interest or a fresh pledge should be given by the debtor. As is said : "When land is washed off by a stream, and also when it is taken away by the king, another pledge should be given, or the amount paid to the creditor." Here 'washed off by a stream' is indicative of consequences of a *vis major*. 10 15 20

Viramitrodaya.

Yājñavalkya, Verse 59.

25

Gopyādheḥ, 'of a pledge for custody', such as copper, silver &c. *upabhoge*, 'on being used', even though very small, *vṛddhiḥ*, 'interest', although large, *no*, 'does not' accrue, by reason of the transgression of the contract. Similarly, *sopakāre*, 'in the case of one for use' e.g., in the case of a cow &c., where the consideration takes the form of enjoyment and use, *tathā hāpīte*, 'is so damaged', i. e. has been rendered unfit for (being dealt with in) any transaction, for that pledge there would be no interest. 30

Nashṭo, 'spoiled', by being broken or otherwise, has become entirely unfit for (being used in) any transaction whatsoever, *vinashṭo*, 35

1. Oh. I. 126.

'destroyed entirely' i.e., reduced to destruction—by the use of the word *cha*, 'also', carried away by thieves—by the creditor, the pledge, *deyah* 'should be paid', to the debtor.

5 The expression 'excepting when it is due to a calamity caused by fate or the king' is connected with the words 'damaged' and all other expressions. Its import is—'due to the fault of the creditor'. By the use of the word *atha*, 'or', stated before the word 'damaged', the expression 'unless caused by fate or the king' is severally connected with the two.

10 If, however, he does not give, then the principal amount becomes a forfeit, vide the text of Nārada¹: "If it has been lost, the principal is forfeited, provided the loss was not caused by an unseen force or the king."

15 Where, however, as compared with the loan advanced, very valuable jewels, etc., had been pledged and is either damaged or destroyed, there, whatever in excess the value of the amount advanced may be, that the creditor should pay to the debtor; vide the text of Brhaspati²: "If on account of its being used, a pledge is rendered worthless, the principal (itself) is lost; if a very valuable pledge be spoilt, in that case he must satisfy the debtor", and also vide the text 20 of Vyāsa: "Through the fault of the pawnee, if a pledge consisting of gold or the like be lost, the debt together with the interest is accounted for, and the creditor is compelled to pay the value of the pledge."

25 The text of Manu³: "The fool, who, without the permission of the owner puts the pledge to use, shall remit half the amount of interest as compensation for the use", is to be used in reference by pledge not for use of things like a slave and the like, where use is anticipated. In such a case, however, the loss of the entire amount of interest has been stated by the Author, and thus there is no conflict. (59).

Yājñavalkya, Verse 59.

A pledge for custody such as cloth, ornaments etc., or one for use, such as a cow etc. if rendered unfit for (being used in) any transaction, except in cases of superior force or the king; or where it is entirely destroyed or is completely deformed, should be restored to the pledgor as

1. Ch. I. 126.

3. Ch. VIII. 151.

2. Ch. XI. 20.

it was in the original. So Brhaspati¹: "If a pledge be destroyed by a fatal accident or by an act of the king, the debtor shall be required either to deliver another pledge or to pay the debt" (59).

Yâjñavalkya, Verse 60.

The (contract of) pledge is established by the (proof of its) acceptance (by the creditor). If it suffers deterioration even when carefully kept, another must be substituted, or the creditor must receive the amount (due to him). 5

Mitâksharâ :—Moreover, *âdheḥ*, of a pledge, i. e., of the one for use as well as that for custody; *swîkaraṇât*, Proof of a *by (the proof of its) acceptance*, i. e. use; *siddhiḥ*, Pledge. 10

proof, of its acceptance and not merely by witnesses, and writing, nor by (the proof of) mere intention. As says Nârada:² "Âdhi is said to be of two kinds, *viz.*, (of) movables as well as (of) immovables. Both of these will be deemed to be established if there is possession, not otherwise."

And the result of this is: "In the case of a pledge, gift, or sale, proof of a prior transaction is however stronger³" i. e., in transactions which have been completed by acceptance, evidence of a prior one is stronger, while the one in which there is no acceptance will not have force even though it be prior. And if such a pledge, even while it is being carefully protected in course of time, suffers *asâratâm*, *deterioration*, i. e. becomes insufficient (as a security) for (the payment of) the original principal and interest even though not changed (in form), then either another pledge should be offered, or the amount of the debt be paid to the creditor. 15

1. Ch. XI. 21. Here apparently this text is cited in amplification of the exception to indicate the procedure where the loss or deterioration takes place under an act of God or of the king, thus pointing to the *debtor's* liability to replace the *pledge* and not the *creditor's* duty, which is the principal point in the rule stressed in the above verse of Yâjñavalkya.

2. See Yâjñ. II. 23 above. p. 718 above.

दैवराजकृताद्वते—excepting fate or an order of the king.

दैव—is any unseen superior force difficult to withstand or counter with असहाय—states as an illustration—'carried away by thieves'; Dr. Jolly translates it as 'fate'. cf. Narada Ch. I. 126.

3. Ch. I. 139.

By saying "deterioration even though carefully kept" it has been indicated that the pledge should be carefully kept by the creditor.

Viramitrodaya.

5

Yājñavalkaya, Verse 60.

A'dheḥ, 'of a pledge', *swikaranāt*, 'by the acceptance', such as of a pledge for custody by delivering it over, and of a pledge for use, by enjoyment, *siddih*, 'is the establishment', and not merely by the writing and other means, vide the text of Nārada¹: "A pledge, however, has been declared to be of two kinds, viz., (of) movables as well as (of) immovables. Both of these will be deemed to be established if there is possession, not otherwise."

By this, in the text²: "In the case of a pledge, a gift, or a sale, etc., the prior alone has preponderance". Proof of possession is stronger, and the conclusion that is deduced is that a prior one without possession, however, although prior is not stronger.

Such a pledge, however, *rakshyamānōpi*, 'even while carefully protected', if it suffers deterioration in course of time, then another pledge should be placed by the debtor, or the amount of the debt should be paid to the creditor. The word *Api*, 'even', has the sense of opposition. In the case of the cow and the like, if it be lost, by a fatal accident, the principal becomes lost. Here also the usage of the caste alone is the authority. (61),

S'ūlapāṇi.

25

Yājñavalkaya, Verse 60.

Ādheḥ 'of a pledge' *siddhiḥ*, 'the establishment,' is by the acceptance i. e. by possession and not by mere intention. So Vyāsa³: "A pledge is said to be of two kinds viz.: (of) movables as well as (of) immovables. Both of these shall be deemed to be established if there is possession, not otherwise" (60).

The Author mentions an exception to the rule⁴ "A pledge lapses if doubled &c."

1. Ch. I. 139.

2. Yājñ. II. 23. See above p. 718

3. The same verse is assigned to Nārada, where it is found at Ch. I. 139.

4. Yājñ. II. 58 (above).

Yâjñavalkya, Verse 61.

In the case of a debt contracted on a Charitra pledge, the amount must be paid with interest, and in the case of a debt contracted on a chattel delivered as an earnest, he shall pay twofold.

5

Mitâksharâ :—*Charitram, conduct i. e. good conduct.*

Pledge by a *charitra* is a *Charitra* pledge. Exception to Upon (the strength of) that whatever amount the rule that 'a has been borrowed and kept for self or given pledge lapses to another. This is the purport. Relying upon when the debt the good faith of the creditor where a thing, is doubled.' even though very valuable, has been made over

10

by the debtor to the creditor, and only a small amount is borrowed, or, where, relying upon the good faith of the debtor, the creditor has advanced a large amount to the debtor even after taking a pledge of a small value, that amount the king should cause to be paid with interest. The purport is this: A pledge of this sort does not lapse even though the amount is doubled, on the other hand the amount only should be paid (to the extent of the) double.

15

Similarly, *satyankârakृtam*. *Kâra* (an act) is the same thing as) *Karana* (making)¹. The affix *Ghañ* (घञ्) is used here to denote action. (भाव *Bhāva*). The making of truth is *Satyankârah*. The augment सुम् (*mum*) is used under the rule of grammar (6-3. 70) “सुम् is the augment of सत्य and अग्र when the word कर follows.” That which is made by means of a *Satyankâra* is a *Satyankârakृta*. This is the meaning intended. When even at the time of offering the pledge itself it was agreed thus viz. “even when the debt is doubled, I am to pay the double amount only, and the pledge is not to lapse” then the double should be caused to be paid.

25

30

*Page 41.

Another meaning (is this): Where *Charitra* itself is the pledge it is called a *charitra-bandhaka*. By the word *Charitra*

1. i. e. the कर which is the expression of action, is used in the abstract sense. कर is the same as करण.

is expressed that unseen¹ virtue known as *apūrva*, which is born of a bath in the Ganges or of (the performance of) the *Agnihotra*².

Where that (i.e. the *Charitra*) itself is pledged and money is received, then the doubled amount itself is to be returned, but there is no lapse of the pledge.

While discussing the pledge, another (kind of loan) is being described, *satyankārakṛtamiti*. Whatever a thing, such as a ring &c. has been placed in the hands of another with a view to complete the agreement of sale and purchase, the double of that thing should 10 be paid if the agreement is broken. Even there, if the person by whom the ring &c. is deposited himself breaks the contract, he should give the thing itself. If the other party commits a breach of the contract, then a double of the ring &c. itself should be returned.

Viramitrodaya

15 Yājñavalkya, Verse 61.

Charitrena, 'by *charitra*', by good conduct, *bandhakam kṛtam*, 'taken as a pledge', i.e., by the creditor accepted to himself a thing of great value, or of a value less than the loan, there the king or the like should compel the debtor to pay the amount together with interest. When the 20 amount becomes doubled, the pledge lapses.

Charitra, i.e., religious merit, where has been made (the subject of) a pledge, there the obligation as a debt, of the religious merit does not become extinct, but the money must be caused to be paid together with the interest. This is the meaning.

25 *Satyankaro*—“even when the amount has doubled itself, the pledge will not become yours, but on the other hand I am liable to pay the doubled amount itself”—under such an agreement when an article is

1. Mark this term. अपूर्व is sometimes expressed as अदृष्ट. It is that unseen virtue which is a relation superinduced, not before possessed, unseen but efficacious to connect the consequence with its past and remote cause and to bring about at a distant period or in another world the relative effect. All the Vedic injunctions laying down the performance of ceremonies and rituals which do not bear any direct tangible fruit derive force from their capacity to create this अपूर्व.

2. अग्निहोत्र is the initiation and maintenance of the sacred fire by offering oblations to it. This is of two kinds: नित्य—ordinary, and काश्य—occasional:

pledged; *Dwiguṇam pratidāpayet*, ‘he must be made to pay the double’; i.e., otherwise the pledge lapses. The Sāmpradāyikas, however, construe it that this has been stated by the Author in regard to a position which arises when for the purpose of facilitating the arrangement regarding a transaction of a gift or a sale, an article such as a ring &c. has been made over into the hands of the seller, and the seller has exceeded the limits of the arrangement, he should pay to the buyer the double. If, however, the transgression is made by the buyer himself, then he also should pay double the amount to the seller. (61) 5

Sūlapāṇi

10

Yājñavalkya, Verse 61.

Chāritryam, ‘religious merit’, such as the maintenance of the perpetual fire *agnihotra*, a bath in the Ganges etc.—by pledging that itself what has been borrowed, that must be paid back with interest.

Where a pledge of small value with the undertaking “Truly I shall 15 redeem this” has been given, that in the long period is to be paid back double, and must not be sold by the creditor. This is the meaning.

Charitrabandham is the reading by Visvarūpa (61).

Yājñavalkya, Verse 62.

A pledge should be restored to the debtor when he 20 comes to redeem it, otherwise the creditor would be (liable as) a thief. If the creditor be not available, the debtor may pay the amount to (a member of) his family and take back his pledge.

Mitāksharā:—Moreover, *upasthitasya*, of one who has 25 come for redeeming his pledge by paying the amount, *ādhirmoktawyah*, the pledge should be restored, by the creditor, and it should not be detained out of a greed for interest. Anyathā, otherwise, i. e. if it is not restored, being just in the 30 position of *stenah*, a thief, he would be punishable like a thief. When, however, the creditor is absent, after placing the *dhanam*, amount, together with interest *kule*, in the family, i. e., in the hands of his relatives, the debtor should take back his own pledge.

S'ûlapâni.

Yâjñavalkya, Verse 62.

To a debtor who has come to redeem the pledge, after taking the amount together with interest the creditor should release the pledge; 5 otherwise he would be regarded as a thief.

If the person who had accepted the pledge be not available, the amount should be placed *i. e.* deposited in his family, and he should get back the pledge. (62).

If, however, the creditor be absent and there are no relatives 10 of his (who are ready) to take the amount, or when the creditor is absent and the debtor wishes to pay the amount by selling the pledge, then (the question would be) what should be done? (Anticipating this) the Author says

Yâjñavalkya, Verse 63 (1).

Or appraised at its value at that time the pledge 15 will remain there without interest.

Mitâksharâ :—Tatkâleti, after ascertaining the value which the pledge had *at that time*, he may deposit the pledge even tatra, there, *i. e.* with the creditor, without interest; it does not carry 20 interest thereafter, till the creditor restores the pledge after taking the amount or cause to be paid to the debtor an amount equal to its value.

When it was settled at the time of (advancing) the loan that 'even if the debt were doubled, a double amount only should be 25 taken, and the pledge should not lapse', then when the debt is doubled and the debtor is not near (the question would be) what should the creditor do? Anticipating this, the Author says

Yâjñavalkya, Verse 63 (2).

(Or the creditor) may sell (the pledge) in the presence of witnesses even without (the presence of) the 30 debtor.

Mitâksharâ :—dhâranîkât vinâ, without the debtor, *i. e.* when the debtor is not present, the creditor should recover the

amount after *vikriya*, selling the pledge in the presence of witnesses and also of his relatives.

The word *wā*, or, is intended to lay down the rule of distribution in the optional¹ case that would arise. It is in this way: When it has not been agreed at the time of (advancing) the loan that 'even if the debt were doubled, the amount only should be taken and the pledge should not lapse,' then under the text² 'a pledge shall lapse when doubled &c.' the pledge shall lapse. In the case of (an express) contract, however, the rule laid down here (should be followed). 10

Viramitrodaya.

Yājñavalkya, Verses 62 & 63

To a debtor who has come for paying off the amount and redeem the pledge *Ādhīḥ*, 'the pledge', *moktavyah*, 'should be released', by the creditor, to the debtor, *anyathā*, otherwise, through covetousness for interest, if it is not released, the creditor, is *stenāḥ* 'a thief', i.e., becomes liable to be punished like a thief. This rule as to obstructive non-release is to be understood as he has the power³. The general exception viz. 'unless it is caused by superior force or the king' holds everywhere where it is fit to be applied. 20

Prayojake, 'the creditor' i.e., the one who advanced the loan, *asati*, 'be not available', i.e., be dead, or has gone abroad, or has become an ascetic; *kule*, 'in the family', i.e., among those who are entitled to take the assets of the creditor, in the order commencing with 'the sons and the rest', *dhanam*, 'the amount', together with interest, *nyasya*, 'having taken', i.e., having deposited, his own 'pledge he should get back', *ādhim āpnuyat*. (62). 25

If, however, there is none whatsoever competent to take the assets of the creditor who has gone abroad, then as evaluated at that time, the pledge shall remain *tatra*, 'there', i.e., in the house of the creditor advancing the loan, without (carrying) interest. The meaning is, that when the money is not accepted owing to the fault of the creditor, after that time interest will not run. 30

Dhāraṇako, 'the debtor', at the time fixed for the redemption of the pledge, is not near at hand, then the creditor, should sell the pledge 35

1. See note 4 on pp. 708-709 above.

2. Verse, 58.

3. i.e. it applies when the creditor taking advantage of his position to dictate refuses the delivery back,

in the presence of witnesses. The rule is, that in such a case after taking (back) his own amount, the balance he should deliver over to the king. By the use of the word *api*, 'even', are included those who are entitled to the estate of the debtor. (62, 63).

5

S'ûlapâni.

Yâjñavalkya, Verse 63.

If the pledge is, on any account, not given (back) to the debtor, then being assessed for its value at that time, it shall remain at that, at 10 the house of the taker of the pledge.

When however, *dhâraṇako*, 'the creator of the pledge' is not available, then after selling it, the creditor may take his own amount, and pass over (the remainder) to the king. (63)

Yâjñavalkya, Verse 64.

15 When, however, a debt under a transaction of pledge has become doubled (by the accumulation of interest), then the pledge shall be returned after double the principal amount has been received (by the creditor) from the profits.

20 Mitâksharâ :—*Yadâ*, when, the amount advanced, dwigunibhûtam, has become doubled, *tadâ*, The Author means then, *tadutpanne*, from the profit, i. e., from a special case the receipts derived from the pledge, *tadâdhau*, of a usufructuary pledge. *after the pledge was made and when dwigune, a double, has been pravîṣṭe, received, by the creditor, the pledge should be restored by the creditor.*

Or if the debt has become doubled without possession (being transferred) either on account of an agreement at the beginning that 'when the pledge is delivered and the debt has been doubled you should restore the pledge', or on account of some other reason the amount has become doubled, then, after the pledge has been made over to the creditor for enjoyment, it should be restored when the profits recovered from it make up the doubled amount. If more be enjoyed, that too should be restored. This text is intended 35 to lay down the rule that a pledge is to be enjoyed only for paying

off entirely the original loan together with interest. It is called in popular language a *kṣhayādhī*, a pledge where the liability is diminished.¹

Where, however, it was agreed that possession of the pledge was intended only for (securing) the interest, * Page 42. there even if the amount has increased more than the double, the pledge will be used

only until the payment of the original loan. This very thing has been made clear by Brhaspati : “The debtor shall get back the usufructuary pledge the time for which has been matured or after paying off the principal amount ; if it has exceeded, then the creditor does not get the amount. The debtor also will not get back the pledge except with mutual consent.”

The meaning of this text is this: That wherein the profits are to be enjoyed is called a usufructuary mortgage or pledge. That moreover is twofold, that

which is intended to pay off the original principal together with the interest, and the one to pay off interest simply. Of these also, in the case of a mortgage which is intended to pay off the original principal and the interest, the debtor shall get back the pledge when the

time for (payment of) it becomes matured (*Purnakālam*), i.e., when the original amount together with the principal has been received by the creditor, then the debtor shall get back the pledge. In the case of

the pledge which is intended for reduction of the interest only, the debtor shall get it back after paying off the principal amount. *Sāmaka* is the same as *sama* (equal), i.e., equal to the original principal. The (same) Author mentions an exception to this : ‘if it has exceeded without mutual consent’. *It*, i.e. the pledge, *has exceeded*, i.e. has transgressed the limit, i.e. if the profits have exceeded even the interest, *then the creditor will not get the amount*.

The creditor does not get the principal amount, i.e. the debtor shall get back the pledge even without paying the original amount advanced. If, however, the pledge has not been exceeded, and is even insufficient for (paying off) the interest, then even after paying off the principal, the debtor will not get back the pledge, but will get it

only after paying away the balance of interest. Again the (same)

5

10

15

20

25

30

35

1. Cf. the *Mortuum vadum* of English Equity.

Author mentions an exception to both these rules. The text 'if it has exceeded, &c.' has been mentioned as applying in the absence of a mutual agreement between the creditor and the debtor. With mutual consent, however, even if the pledge be exceeded, the creditor 5 may enjoy it until the original principal is paid, and also (on the other hand) even if it be insufficient, the debtor gets it back by the payment of the original principal only.

Here ends the Chapter on the Recovery of Debts.

Viramitrodaya

10 The Author states a special rule in the case of a pledge with possession.

Yâjñavalkya, Verse 64.

If *Rnam adhau*, 'a debt under a pledge', on account of enjoyment, *dwigunibhûtam*, 'has become doubled', then when the amount so doubled has passed to him, the pledge should be released by the creditor. This is the meaning.

This is what is called a *Kshayâdhi* 'a self-effacing pledge.' This, moreover, would be so when it has been so agreed upon by the creditor, as it is based on the same principle as the text of Vishnu¹ viz.: "Even 20 if the maximum amount of interest is paid, the mortgaged article, if it is immovable (shall not be returned), unless there be an agreement to that effect."

One who is afraid of an illegality, should release the pledge; vide this text of Brhaspati²: "Where the use of a pledge (is continued) after twice the principal has been realised, (receipt) of the compound interest and the exaction of the principal and interest, that is (called) usury, and is reprehensible."

It is also said that except under a special agreement it does not carry interest. (64)

30 Here ends, in the commentary on Yâjñavalkya,
The Chapter on the Recovery of Debts.

S'ûlapâni.

Yâjñavalkya, Verse 64.

"When the profits of this reach double the quantity of the amount, my pledge is to be released", thus saying when a pledge is offered, then when from its income double the amount (advanced) has been realized, 5 then the pledge is to be released and not to be enjoyed. (64)

Chapter IV.

THE LAW OF DEPOSITS.

Yâjñavalkya, Verse 65.

Property which being placed in a box is delivered into the hands of another without being described, is called a deposit; (and it) should be returned in the same condition (in which it was when delivered). 10

Mitâksharâ :—A thing which holds the things deposited, being different from it, is a Vâsana, box, a receptacle, e.g., a Karanda, &c. dravyam; described. property, wâsanastha, which is placed in it, the particulars as to the quality and the quantity of which anâkhyâya, is without being described i. e. mentioned, and (after it is) sealed, arpyate, is delivered, in confidence for safe preservation, anyasya haste, in the hand of another, that property is called, aupanidhikam, deposited property. As says Nârada: "That (property) which being under a seal is deposited without being counted or known, should be known as an upanidhi; while it is known as nikshepa where it is counted." 15 20 25

Pratideyam tathaiva tat, should be returned in the same condition. The person with whom it has been deposited, should return i.e. restore it back to the depositor in the same condition in which it was delivered bearing the seals as before.

838. *Sūlapāni & Mitāksharā—Rule in case of loss by 'vis major' etc.* [*Yājñavalkya*:
Verses 65, 66.]

Sūlapāni.

Yājñavalkya, Verse 65.

5. *Vāsanam*, 'a receptacle' to hold the deposit, such as a casket etc.; placed there without detailing its form, number etc.; what is deposited in another's hand, that is *aupanidhikam*, 'deposited property'. That, *tathaiva*, 'as it was', i. e. marked with the seals etc. should be returned. (65)

The author mentions an exception to the rule as to restoration

Yājñavalkya, Verse 66 (1).

That, however, which has been carried away by
10 (an act of) the king, Providence, or thieves shall not be caused to be restored.

Mitāksharā :—*Tam*, *that*, deposit, which was carried away *rājñā daivena*, by (an act of) *the king or by* An exception to *Providence* e. g. by floods &c. or by *thieves*,
15 the rule as to res- *taskaraih*, and has (thus) perished, *na dāpyah*, toration of an *he shall not¹ be compelled to restore*. Of him with *upanidhi*. whom it was deposited, *viz.* the creditor, the property lost being that of the real owner² himself, provided it (*i. e.* the loss) was not brought about³ by fraud. As
20 says *Nārada*⁴ :—“If a deposit is lost, together with the property of the depositary, the loss shall be the depositor's. The same rule shall obtain, if the loss has been caused by fate or by the king, unless the depositary should have acted fraudulently.”

1. See also *Kātyāyana* Verse 594.

2. The word *Dhanin* (धनिन्) here stands for the debtor who is the real owner of the thing deposited. The meaning is that if a loss takes place under the conditions specified the loss is that of the depositor and not of the depositee. Cf. s. 153 of the Indian Contract Act.

3. Mark the expression—जिह्वाकारितम्. If it were the object of the Author simply to indicate direct fraud on the part of the bailee the expression जिह्वकृतम् would have sufficed. But the suffix कारितम् is purposely used with a view to cover the case not only of direct fraud but of any fraud whether direct or indirect to which the creditor was a privy.

4. Ch. II. 9.

The Authour mentions an exception to the above rule

Yâjñavalkya, Verse 66 (2).

When, however, the loss occurs after demand and non-payment¹ the depositary should be fined and compelled to pay an (amount) equal (to the deposit). 5

Mitâksharâ :—When, márgite, *demanded*, by the owner if he do not pay, then after that time, even if * PAGE 13. *bhresho*, *the loss*, i. e. the destruction occurs on account of the king &c., the bailee should be made to pay to the owner the amount as determined by (the value of) the original, as also to the king an equal fine. 10

S'ûlapâni. 66.

Yâjñavalkya, Verse 66.

If, when demanded and not delivered, its *bhresho*, ‘loss’, i. e. destruction, takes place, then he should be made to pay, and also a fine the king should take for himself. If it is lost owing to the fault of the depositor of the bailment, then he himself must pay, as says Kâtyâyana²: “By whosoever fault is the property lost or is taken away, he must be compelled to make good that amount together with interest excepting when caused by fate or the king.” (66). 15 20

The Author mentions a penalty for (wrongful) appropriation.

Yâjñavalkya, Verse 67 (1).

If he, (i. e. the bailee) of his own will,³ makes a living, he shall be punished, and also made to pay it with the increase. 25

Mitâksharâ :—He who, *swechchchayâ*, *of his own will* i. e. without the permission of the owner,⁴ *âjîvati*, *makes a living* i. e.

1. At p. 42. l. 30 दत्ते is a misprint. It should be अदत्ते—दत्ते.

2. Verse, 594.

3. In Roman law the use of a thing deposited without the consent of the owner constituted *furtum* (See Justinian Bk. IV. I. 6.). In English law such use would not be larceny without the intent to deprive altogether the owner of his property in the deposit.

4. i. e. without the consent or permission of the bailor.

appropriates or deals with it by lending (at interest) with a view to (make) a profit (out of) the money¹ deposited, should be fined having regard to the extent of the appropriation and also of the profit (made by him); and he should also dâpyah, be made to restore, the deposit 5 soda�am, together with the increase, i.e. in the case of an appropriation, together with interest, and in the case of a loan advanced, together with the gains realised (in the transaction). The (special) rule of interest (in such cases) has been stated by Kâtyâyana², : “A deposit, the balance of interest, (an article) sold, and (the price of) a thing 10 purchased, if not paid on demand shall bear interest at five per cent.” This rule moreover, is to be observed where there has been (complete) appropriation. In case, however, where it is lost on account of neglect or ignorance, the same (Author) has mentioned³ a special rule viz.:—“Where the deposit has been appropriated and used up, he 15 should be made to pay (it back together) with interest and an equal amount if neglected ; where it (the deposit) has been lost on account of ignorance, he should be made to pay a little less.” ‘Little less’ Kinchinnyûnam i. e. less by a fourth part.

20 The Author extends the rule regarding a deposit, to the cases of Yâchita &c.

Yâjñavalkya, Verse 67 (2).

The same law applies in the cases of Yâchita, Anvâhita, Nyâsa, Nikshepa, and (such) other kinds (of deposits).

25 Mitâksharâ:—When, on festive occasions such as a marriage &c. clothes, ornaments &c. are begged for and taken away it is (called) a Yâchitam.⁴ Where a thing is placed in the hands of one, and by him also has thereafter (anu) i. e. afterwards further on, been placed in the hands of another with (the direction): “(Please) give 30 it to the owner” it is (called) an Anvâhitam. What is known as Nyâsa is a delivery to a member of the house in the absence of the owner and without⁵ being shown to him, with (the direction) “this

1. The original word is द्रव्यं it may also mean a thing.

2. Verse, 506.

3. Verse, 597.

4. Cf. the *Commodation of the Roman Law*.

5. There is a mistake in the print of the text on p. 43, l. 14. The correct reading is गृहस्वामिनेऽदर्शयित्वा and not गृहस्वामिने दर्शयित्वा. Nyâsa is a secret deposit handed over to some member of the house in the absence of the owner.

is to be made over to the owner of the house." A delivery in his presence, however, is a *Nikshepa*.

By the (use of the) word *âdi*, *and others*, are included cases of a *deposit* *Nyasta* e.g., of gold &c. in the hands, of a goldsmith &c. for preparing a bracelet &c. as also of *mutual bailments*¹ as e.g. in cases where there occurs a need of each other with words "you should keep this mine, and I shall keep this yours," as says Nârada²: "The same law applies in the case of *Yâchita*, *Anvâhita* and other such deposits, articles made over to an artist, *Nyâsa*, and *Pratinyâsa* deposits." In the case of these i.e. the *Yâchita* &c. *this very rule* i.e. the rule in the case of a deposit, *viz.* of repayment &c., should be understood (as being applicable). 5 10

Here ends the Chapter on Deposits.

Viramitrodaya

In regard to *Nikshepa* or deposit, a title at law, the Author says 15

Yâjñavalkya, Verses 65, 66, 67.

Vâsanam, 'a receptacle' such as a casket or the like, fit to hold a deposited article; property lying there, the quantity &c., *anâkhyâya*, 'without being declared', i.e., without mentioning, *anyasya haste*, 'in another's hand', for protection and out of confidence, *arpaye*, what 'is delivered', *taduupanidhikam*, 'that is called an *upanidhi*' a special kind of deposit. 20

The general characteristics of a *nikshepa* deposit, however, should be noted as stated by Nârada:³ "Where one, out of confidence entrusts his own property with another without suspicion, it is called by the wise a deposit, a title of law". "Of a good family, of good conduct, well-versed in law, and a truth-teller," these and others stated by Manu⁴ are only an extension of (the qualities for) the confidence being reposed. 25

There, *aupanidhikam dravyam*, 'property which has been deposited as *upanidhi*', *tathaiva*, 'as it was', i.e., without declaring or counting, as 30

1. A *Pratinyâsa* is a mutual bailment both parties exchanging deposits with one another.

2. Ch. II. 14.

3. Ch. II. 1,

4. Ch. VIII. 180,

before marked by the seals &c., *pratideyam*, 'is to be returned' to the depositor. (65)

There, an *upanidhi*, deposit, if either by the king, by Providential dispensation such as by fire, or by a thief, is taken away, in such cases 5 the acceptor of the deposit is not to be compelled to make good to the depositor.

If, however, when *mārgite*, 'sought' i.e., demanded by the depositor, even then *adatte*, 'if not given', and in regard to that property 10 a loss or deterioration occurs as being caused by the king or Providence, that *upanidhi* by its value, to the depositor and an equal amount as fine to the king, the acceptor must be compelled to pay. By the use of the word *cha*, 'and also', is included the depositor.

Swechhayā, 'of his own will', and not with the consent of the depositor, *tam*, 'that', i.e., the *upanidhi*, deposit, *ajivan*, 'makes a living upon', i.e., appropriates it by use for making a profit of the interest, 15 *rājñā dānyah*, 'he should be punished by the king'; *tam* 'that', *upanidhim*, 'deposit', *sodayam*, 'together with interest', he should be compelled to pay to the depositor.

Here moreover, Kātyāyana¹ states the rule as to interest: "A 20 *nikṣepa* deposit, the balance of interest, the proceeds of a sale, as also of a purchase, when being asked for if one does not pay, each carries interest at five per cent".

Manu²: "What was carried away by thieves, or drowned in water, as also what was consumed by fire, one need not pay; provided one does 25 not appropriate any portion." Collecting together, i.e., taking a little, and the remainder he deposits elsewhere, or neglects the entire quantity, on the ground 'I am not to be responsible for it', then the whole must be made good. This is the meaning. Vyāsa³: "Where the deposit has been appropriated and used up, he should be made to pay it, together 30 with interest, and an equal amount if neglected; where it has been lost on account of ignorance, he should be made to pay a little less."

Manu⁴: "If by false means any man deprives another of his property, he along with his accomplices, shall be publicly punished by the various modes of corporal chastisements, *Vadha*, 'chastisement', 35 such as beating, &c.

1. Verse 506.

2. Ch. VIII. 190.

3. Vijñanesvara assigns this text to Kātyāyana, while here and in Parāśara Madhava it is assigned to Vyāsa. See Kātyāyana Verse, 597.

4. Ch. VIII. 194,

Yāchita &c. *Ayam*, ‘this’, i.e., the one stated in connection with the *upanidhi* deposit, *vidhiḥ*, ‘rule’, i.e., the procedure, such as the liability or the non-liability to pay on occasions affected by the king or fate, should be understood in the case of *Yāchita* and like other kinds of deposits. Where, on the occasion of a marriage or like festivity, clothes, ornaments, etc., are asked for and borrowed on an undertaking for repayment, that is called *Yāchitam*. *Anvāhitam*, when the owner has deposited a thing with one, and by that one also, (*anu*) afterwards deposited further on with another under the direction of the depositor. *Nyāsa* is that where without showing to the master of the house, and even in his absence, a deposit with his people with the words ‘(this is) to be made over to the master of the house.’ Handing over an article to an artisan for preparing into an ornament, after describing it in his presence and giving it over to him is *Nikshepa*.

By the use of the word *A'di*, ‘and like others’ are included things bought (but not paid) and like others mentioned by Gautama¹. For while stating the liabilities, under the text² ‘the sons should discharge’, Gautama, says: “An open deposit, a sealed deposit, a loan for use, an article brought³ on hire, and a pledge, when lost without the fault of the holder, (shall not involve) any blameless person.” *Avakritam*, an article ‘brought on hire’, i.e., brought by paying a rent.

When the depositor is available, the deposited article must be delivered over to him, so says Brhaspati⁴: “By whomsoever has an article been deposited, and by whatever process, to him and in the same manner should it be delivered over to him and not to any other.” *Any other*, i.e., successor, such as the son and like others.

Manu⁵: “He who delivered himself, when dead, and the bailee delivers it back to his successor, he must not be charged by the king, nor by the cognates of the depositors.”

Under a special agreement (to that effect), however, even when the depositor is living, delivery to the successor may take place in regard to the *Yāchitāha*, which has been almost described above; so says Kātyāyana⁶: “After the (stipulated) time has arrived, and the purpose is over, when he does not deliver although asked for, if the article is lost

1. Ch. XII. 38.

2. Ch XI. 39.

3. अदत्तमौल्यपर्धदत्तमौल्यं वा, हरदत्तः—Price entirely or partly not paid for.

4. Ch. XII. 9.

5. Ch. VIII. 187,

6. Verse, 607.

or even taken away (by any other), then the borrower should take the price and offer it ”. ‘Lost’—even by an act of God.

Thus in the Commentary on Yājñavalkya ends
the Chapter on Deposits.

5

S'ūlapāṇi.

Yājñavalkya, Verse 67.

The *Aupanidhi* deposit, if the bailee puts to use without the consent of the depositor then he should be fined in an equal amount by the king, and the amount also should be caused to be paid to the depositor 10 together with interest.

Yāchitam, ornaments &c. brought for decoration. Where the right of ownership is given it is *Nyāsa*: “Where through fear of robbers, king, and the enemies, and also for deceiving the *Dāyādas*, a chattel is deposited in the house of another man, that is called a *Nyāsa*” thus characterised 15 by Brhaspati¹. “Where one’s property, out of confidence one deposits with another without any suspicion, that is called *Nikshepa* by the wise” thus stated by Nārada². In regard to these also, the rule viz. “He is not to be made to pay what is taken away by you,” is to be understood to apply. Vyāsa³ states a special rule: “Where the deposit has been 20 appropriated, he should be made to pay (it back together) with interest, and an equal amount if neglected; where it has been lost on account of ignorance he should be made to pay a little less.”

Here ends the Chapter on Deposits.

Chapter V.

25

OF THE WITNESSES.

It has been said above⁴ that ‘evidence has been laid down to consist of a writing, possession, and witnesses.’ Of these, (the law as to) possession has been examined. Now begins an examination of the nature of (the rules of law as to) witnesses.

1. Oh. XII. 2.	2. Oh. II. 1.
3. See note 3 on p. 842 above.	
4. Yājn. II. Verse. 22, p. 743 ll. 16–18,	

Characteristics of witness.

One becomes a (proper) witness by his actually having seen or heard (a thing), as says **Manu**¹:—“ Witness Evidence is admissible if (it is) in accordance with what has actually been seen or heard (by the witness). ” Such a witness, moreover, is of two kinds, appointed and unappointed. When marked as a witness, he is called an appointed, and when not marked, an unappointed. Of these the appointed is of five² kinds and the unappointed of six, and thus these witnesses are of eleven kinds. As says **Nârada**³:—“ Eleven varieties of witnesses are distinguished in law by the learned. Five of them are known as appointed, and the other Six as unappointed.” Their (further) classification has also been indicated by the same **Author**⁴:—“ A subscribing witness, one who has been reminded, a casual witness, a secret witness, an indirect witness, these are the five sorts of appointed witnesses ”.

* Page 44.

Kâtyâyana⁵ has described the characteristics of the subscribing and other witnesses (thus): “ One who was invited by the claimant⁶ himself and who has been entered into the document, is called a subscribing witness, and who has been made to remember without the document (being shown to him) (371). ” The same **Author** has explained the meaning of the expression ‘ Made to remember without the document’ (smâritah patrakâdrte) thus: “ He, moreover, who for the purpose of establishing a transaction, is reminded again and again by the claimant after (his) having seen (the document evidencing) the transaction is called here a witness ‘ who has been reminded ’ (372). ” He, however, who having arrived by chance, has been made (to subscribe as) a witness is a *casual witness*. The same **Author** has pointed⁷ out a distinction among

1. Ch. VIII. 74.

2. Here there is an error in the print in the Sanskr̥t text on p. 43. I. 25.

It should be तत्र कृतः पञ्चविधः अकृतश्च षट्विध इत्येकादशविधः

3. Ch. I. 149.

4. Nârada Ch. I. 150.

5. Verses. 371-375.

7. Verse, 373.

6. वार्थी—the party who sets up a claim.

these witnesses even when they have not subscribed to the document : “ One (specially) called on the occasion, and one who had gone (merely) by chance, these two (kinds of) witnesses can establish the claim of the plaintiff, although they are not entered into the document (373)”. Moreover : “ He is called a *secret witness* who while remaining concealed, has been made to hear distinctly the words of the defendant by the plaintiff for establishing his claim (374)” And “ He is called an *Indirect witness* who, either from direct or hearsay knowledge corroborates broadly the statements of (actual) 10 witnesses (375).”

Nârada¹ has also pointed out the six kinds of the unappointed (witnesses) : “ The village, a judge, a king ; one commissioned² for (special) duties by the disputants, and one deputed by the claimant. In family quarrels, members of the family shall 15 (also) be witnesses.” The mention of ‘a judge’ is indicative by implication also of ‘a writer’ and ‘a Sabhya³’. “The writer⁴, the judge, the Sabhyâs have, in order, been laid down as witnesses when the case is under investigation by the king.”

Such witnesses ; of what kind and how many will (these) be ? 20 (Anticipating such a question) the Author says

Yâjñavalkya, Verses 68, 69.

Men devoted to religious austerities, men liberally disposed, men of high families, truthful men, men (chiefly) devoted to religious observances, straightforward men, 25 men blessed with sons, and men possessed of wealth (68)

are to be known as competent witnesses, (provided they are) not less than three, and devoted to the performance of S'rauta⁵ and Smârta rites ; each respectively

1. Oh. I. 151-152.

2. कार्येभ्वधिकृतः—‘ कार्येभ्वध्यन्तरो यः ’ is another reading & Dr. Jolly translates it as “ one acquainted with the affairs of the two parties. ”

3. See p. 636 n. 4 above.

4. Kâtyâyana, Verse. 355.

5. S'rauta and Smârta rites are those laid down in the S'ruti and the Smritis. See Yâjñayalka Âchâra. Verse 97 and Vijñaneswara's prefatory remarks thereon. pp. 267-268 above.

according to their caste or class, or all for all (castes and classes).

Mitâksharâ :—*Tapswinah*, men devoted to religious austerities i. e. habitually devoted etc.; *dânas'îlâh*, liberally disposed, i. e. devoted to making donations; *kulinâh*, of high families, i. e. born in high families; *satyawâdinâh*, truthful, i. e. having a character for truth-speaking; *dharmapradhânâh*, devoted to religious observances, and not to observances actuated by *Artha*¹ and *Kâma*; *rjavah*, straightforward, not crooked; *putrawantah*, blessed with sons, i. e. with living sons; *dhanânvitâh*, possessed of wealth, i.e. possessed of considerable wealth such as gold etc.; *srautasmârta-kriyâparâh*, devoted to the performance of *srauta* and *smârta* rites, i. e. devoted to the performance of ordinary and special rites.

Men of this description, *tryavarâh*, not less than three, are (accepted as) competent witnesses. Those

The number of than whom three will not be below i. e. less, are witnesses. *tryavarâh*, men not less than three i. e. men who are not on this side of (the number) three.

The meaning is, that for more than this, their number would be according to the requirements. Without going outside the caste, is according to caste, *yathâjâti*. Castes such as *Mûrdhâvasikta*² and others born of descending³ or ascending unions. Among these, for the *Mûrdhâvasiktas*, the witnesses shall be the *Mûrdhâvasiktas*. The same (rule) should be observed with reference to the *Ambashthas* and others..

25

1. The three *Puruṣhârthâs*—ends and aims of all worldly activities—are *Dharma*, *Artha* and *Kâma*, the securing of religious, pecuniary, and personal advantages.

2. मूर्धवसिक्त (*Murdhâvasikta*)—see the ‘ evolution of castes ’ as given in *Yâjñ. Âchârâdhvâya*, Verses 90–96 pages 241–267 above. The issue begotten by a *Brâhmaṇa* on a *Kshatriyâ* wife is called *Murdhâvasikta*. *Yâjñ. Âchâra*. 91.

3. अनुलोमज i. e. the issue of the union of the male of a higher class with the female of a lower class. These have been indicated in Verses 91 and 92 of the *Âchârâdhvâya* of *Yâjñavalkya*, pages 248–251. The contrary of this term is प्रतिलोमज (*Pratilomaja*) the issue of an inverse union i. e. the Union of the male of a lower order with the female from a higher order. See Verses (93–95) *Do. Do* (pages 252–260).

Not going beyond the class is *according to the class*, *yathāvarṇam*. *Classes*, such as the Brāhmaṇas and others. Here, in cases of Brāhmaṇas, Brāhmaṇas alone of the specified description and number can be witnesses. The same (rule) should be observed in 5 the case of *Kṣatriyās* and others. Similarly, in cases concerning women, women alone can give evidence. As says Manu¹: “Women should give evidence for women”.

In the absence of persons of the same caste or class all *i. e.* the *Murdhāvasiktas* and *Brāhmaṇas* &c. will become (proper) 10 witnesses in the cases of all *i. e.* *Murdhāvasiktas* &c., *Brāhmaṇas* and others.

In the absence of witnesses of the aforesaid description, in order to establish the rule that others for whom there is no objection may be (accepted as) witnesses, it is necessary to mention those who 15 are not (fit to be) witnesses. These have been pointed out by Nārada² as of five sorts :—“The incompetent witnesses, too, have in law³ books been mentioned by the learned to be of five sorts; (*viz.* witnesses who are incompetent) on account of a (specia') text of law, on account of depravity, of contradiction, on account of a voluntary 20 deposition, or of an intervening death.”

It may be asked what witnesses again are incompetent under a special text? So the (same) author⁴ says: “Learned Brāhmaṇas, hermits, aged persons as also ascetics and others, are incompetent (as) witnesses under a special text of law; and no (special)⁵ reason 25 is given for this (rule).” Hermits *i. e.* *Wānaprasthas*⁶. By the term *Ādi*, and others, are included those who have any dispute (at law) with the father or (such) others. As says S'ankha: “Persons

1. Ch, VIII. 68.

2. Ch: I. 157.

3. ‘शास्त्रेऽस्मिन्’ is another reading &c. “In this law”

4. Nārada Ch. I. 158.

5. The reason why the persons referred to in this paragraph are excluded seems to lie in their entire renunciation of earthly interests, which render them unfit to appear in a court of justice. Of: Manu VIII. 65 — Dr. Jolly.

6. One in the third stage of life, the four stages being ब्रह्मचर्य, गार्हस्थ्य, वानप्रस्थ & संन्यास.

having a dispute (at law) with the father, resident students at the preceptor's home, ascetics, hermits, and the *Nirgranthas*¹ are incompetent (to be) witnesses.”

Persons unfit to be witnesses *on account of depravity* have been pointed out (by him²) thus: “Thieves, robbers, dangerous characters, gamblers, and rogues³, are incompetent (as) witnesses on account of depravity; there is no truth (to be found) in them.” *Dangerous characters* (*chaṇḍāḥ*) *i.e.* of excitable temper. *Gamblers* *i.e.* those engaging (themselves) in gambling. 5

The same Author⁴ has pointed out the nature of witnesses 10 incompetent on account of contradiction: “Should one of the witnesses entered on record or summoned by a party depose to a falsehood, all of them become incompetent (as) witnesses on account of a Contradiction”.

Similarly the nature of a *Swayamukti* or a volunteer witness 15 has been described⁵: “A volunteer witness is he, who without being appointed to be a witness, comes of his own accord to make a statement, (and) is termed a spy in the law-books; he does not deserve to bear testimony.”

The characteristics of a witness (rendered) incompetent on 20 account of intervening decease have been given thus⁶: “When a claim has to be proved, and the claimant is not in existence, for whom can (any person) bear testimony? And so such a person is an incompetent witness by reason of intervening decease.” *i.e.* either by the plaintiff or the defendant,—who has to prove a 25 (particular) claim (by informing his witness) thus: ‘you shall be my witness for this claim’; when such a one—*i.e.* either the plaintiff or

1. निर्प्रथ (Nirgrantha)—*free from all ties* or hindrances—a saint or devotee who has renounced all wordly attachments, and wanders about naked and lives as a hermit. The term has also the following meanings:—an idiot, a fool, or a gambler; ‘without a restraint’. This term is also used at times in reference to Jain or Budhist monks—a fact evidencing a particular attitude towards this sect at one time.

2. Nârada Ch. I. 159.

3. वश्चकाः . वधकाः is another reading: assassins.

4. This text is assigned to *Kâtyâyana* by the Author of the व्यवहारमूल.

See Verse 359 Kâne.

5. Nârada 1. 161.

6. Nârada Ch. I. 162.

the defendant is not in existence *i. e.* is dead, and the claim has not been proved, in what claim or for whose behalf should one bear testimony as a witness? and thus one ceases to be a witness, on account of intervening decease.

5 Where, however, the sons have been told by their father at the time of death or even while he was in (sound) health, that in such and such a claim, such and such persons will be witnesses, in such a case one can be a competent witness even though there has been an intervening decease. As says Nârada: "A witness
10 becomes incompetent on account of intervening decease, unless he has been named by the dying man." And also, "Where a witness has been named by one while (perfectly) free from any disease in a claim which is in accordance with the law, even if the claimant die, the witness (still) continues to be (a competent) witness in claims such
15 as for the six kinds of property *viz.* *Anvâhita* and others."

S'ûlapâni.

Yâjñavalkya, Verse 68.

Rjavo, 'straightforward,' *i. e.* not crooked. Of this kind should the witnesses be; should be understood. Thus is the connection with what
20 will be stated hereafter.

S'ûlapâni.

Yâjñavalkya, Verse 69.

Three is the least *i. e.* lowest number of whom are *tryawarâh*, 'not less than three'. The meaning is that they shall be not less than three. *Yathâjâlîti*, 'according to the caste &c.'; to whichever caste one may belong, of that caste shall his witnesses be; so, of a touchable caste, a touchable. Or in the case of all, all may be witnesses, since Manu, has observed: "Witness evidence is admissible if (it is) in accordance with what has actually been seen or heard (by the witness)." This¹ moreover, is indicative as applicable as a means (of evidence)—the meaning is one is admissible as a witness who has evidence regarding the subject matter in dispute

1. Oh. VIII. 74.

The Author mentions those who are incompetant¹ witnesses

Yājñavalkya, Verses 70, 71.

A woman, a minor, an old man, a rogue, an intoxicated person, one violent, one against whom an accusation has been brought, a stage-dancer, a heretic, a forger, one deformed (70). 5

One degraded, a relative, one having an interest in the subject-matter (of the suit), an ally, an enemy, a thief, a desperado, one who has been found guilty, an outcast, and the like others are incompetent witnesses. 10

Mitākṣharā :—Strī, a woman, is well known ; bâlah, a minor, one who has not attained (the age of) capacity ; vr̥ddhah, an old man, one who is above eighty. The use of the term vr̥ddha is indicative also of others e. g. learned Brâhmaṇas etc. for whom there is a (special) prohibition in the texts² ; kitavah, a rogue, one who gambles with the dice ; mattah, an intoxicated person, i. e. by drinking etc. ; unmattah, one violent i. e. one possessed by an evil spirit ; abhisastah, one against whom an accusation is brought, i. e. against whom a charge is pending, such as of killing a Brâhmaṇa etc. ; rangâvatârî, a stage-dancer, i. e. a professional actor ; pâkhaṇḍinah, heretics, such as Nirgranthas³ and others ; kûṭakṛt, a forger, i. e. one who makes false documents etc. ; vikalendriyah, one deformed e. g. without an ear etc. ; patitah, one degraded, such as a Brâhmaṇa-killer etc. ; âptah, a relative i. e. a friendly relative ; arthasambandhî, one having an interest in the subject matter (of the suit), i. e. the subject matter of the suit which is under investigation ; sahāyah, an ally, i. e. a partner ; ripūh, an enemy, an opponent ; taskarah, a thief, a robber ; sâhasî, a desperado, one menacing (others) by the (sheer) force of his strength ; dr̥śhtadoshah, one who has been found guilty, i. e. who has been 15
20
25
30

1. There is a mistake in the print of the text at p. 45 l. 18. for तानेतान् साक्षिणो read तानेतानसाक्षिणो.

2. e. g. Manu. VIII. 64-67. Nârada. I. 157-171.

3. Jain or Budhist monk. See note on p. 849. above. See also the Mitāksharā on Yâjñ II. 192 a regards पात्विङ्गः वेदस्य प्रामाण्यमेव नेच्छान्ति; नग्नः सौगतादयः।

found out as having told an untruth; *nirdhūtah*, *an outcaste*, one abandoned by his relatives.

By the use of the term *Ādya*, ‘and others’, are also included others who have been mentioned in other *Smṛtis*¹ as incompetent witnesses on account of depravity, contradiction, volunteering a deposition, or of intervening decease. These (as also) a woman, a minor &c. are not fit to be witnesses.

* Page 46.

S'ūlapāṇi.

10

Yājñavalkya, Verses 70, 71.

These, i. e. women &c. although possessing the aforestated qualifications must not be admitted. *Kitavah*, ‘a rogue’, one who starts betting. *Rangāvatāra*, ‘a stage dancer’, i. e. one who maintains himself upon the stage. *Sāhasi*, ‘a desperado’, one who commits thoughtless acts; *dṛashṭadoshah*, ‘one who has been found guilty’, i. e. in elsewhere; *nirdhūtah*, ‘an outcaste’, one who has been banished from the village. By the use of the word *ādya*, ‘and others’, are included, the *Srotiyas*, ascetics, and others stated in other *Smṛtis*. (70, 71).

“Witnesses are known to be not less than three”²; the Author 20 mentions an exception to this text

Yājñavalkya, Verse 72 (1).

When approved of both parties, even one person becomes a (sufficient) witness, if he is conversant with his duties.

25

Mitākṣharā:—*Dharmavit*, one is said to be *conversant with his duties*, who performs the ordinary and

About a witness sole. special rites after (properly) understanding them.

30 of both parties.

Such a one, even if alone, is a (sufficient) witness, *ubhayānumataḥ*, when approved By the force of the word *api*, even, even two (would do). Although under the text³: ‘Devoted to the

1. e. g. see Nārada. I. 157 See 848. p. 16-20, above.

2. Verse 69 above p. 846 l. 26. 3, Yājñavalkya II 69 p. 846 l. 27.

performance of the *S'rauta* and the *Smārt* rites', the (condition regarding the) observation of duties holds equally even in the case of more than three persons, still these are admissible as (competent) witnesses even in the absence of a consent from both sides, while a single witness or two are accepted as sufficient only with the consent of both (parties), and thus the use of the expression (*tryavara*¹) 'not less than three' has a purpose.

5

The Author mentions an exception to the text,² "men devoted to religious austerities, men liberally disposed &c."

Yājñavalkya, Verse 72 (2)

10

In the cases of adultery, theft, insult, and a *Sāhasa* (a heinous offence), any person may be a witness.

Mitâksharâ :—*Sangrahaṇa*, *adultery*, and other offences

the characteristics of which will be mentioned

In cases of theft and other proceedings even persons (specially) prohibited may be accepted as witnesses. later on³. In these cases all persons, whether prohibited by special text or wanting in the special qualities of austerities, are competent. But here also, the persons who are incapacitated from being witnesses on account of depravity, of contradiction, or on account of a volunteered statement, are not acceptable as witnesses, the cause (of incapacity) viz. the absence of (truthfulness) &c. being also applicable here.

15

20

25

Although on account of the text³: "Manslaughter, robbery, an indecent assault upon another man's wife, and the two species of insult, such are the four kinds of Heinous offences," adultery with women, robbery, and assault are regarded as heinous offences, still, these very offences become heinous when they are committed in public (by the offender) in mere brute force, while when committed in secret they are designated by the words adultery &c. and hence they have been distinctly mentioned in addition to the *Sāhasa* (or Heinous offences).

30

1. Yājñ. II. 69. p. 846

2. See Verse 68.

3. Of Nârada. Ch. XII. 2.

Viramitrodaya.

‘Evidence has been laid down to consist of a writing, possession, and witnesses’ so has been stated above¹. Of these, possession has been discussed. Now the Author discusses the law about witnesses by an entire Chapter

Yājñavalkya, Verses 68, 69, 70, 71, 72, 73.

10 *Tapaswinah*, ‘men devoted to religious austerities’, i. e. as a matter of habit devotee to austerities; *dānasilāh*, ‘liberally disposed’, i. e. devoted to making donations; *kulināh*, ‘of high families’, i. e. born of families free from any taint of mixture &c.; *satyavādinah*, ‘truthful men’, i. e. having a character for truth-telling; *dharmapradhānāh*, ‘devoted to religious observances’, i. e. whose principal objective is religion; *rjavah*, ‘straightforward’, i. e. not crooked-minded. (68).

15 Those, (the number) of whom three is a lower degree are *tryawarāh*, ‘not less than three’. *Vide* the text of Br̥haspati²: “Nine, seven, or five, should they be; as also four, or three also”, Śrauta performance, such as the maintenance of the perpetual fire &c.; a Smārta performance, such as the performance of the *Sandhyā* worship and the like; one ever alert on their performance, and performing these every 20 day; *yathājāti*, ‘according to caste’, i. e. in accordance with the castes; thus the conclusion is that for the *Mūrdhāvasiktas*, the *Mūrdhavasiktas*; for the *Ambashīhas*, the *Ambashīhas* to be witnesses; for the women, women to be witnesses.

25 In the absence of those of one’s own caste or of one’s own class, in the case of all disputants, all i. e. the *Mūrdhāvasiktas* &c., as also Brāhmaṇas &c., who have been stated to be witnesses, in the Smṛtis of Manu and others, should be regarded as proper witnesses. (69).

30 Women &c., however, are not (proper) witnesses. *Bālah*, ‘a minor’, one below the age of sixteen; *vṛddho*, ‘old’, more than eighty years of age; *kitarah*, ‘a rogue’, one who habitually gambles with dice; *mattah*, ‘intoxicated’, by spirituous liquor &c.; *unmattah*, ‘violent’, such as by madness &c.; *abhisasto*, ‘possessed’³ i. e. on account of the curse of Brāhmicide &c.; *rangāvatāri*, ‘a stage-dancer’, i. e. an actor; *pākhanḍī*, ‘a heretic’ i. e. one outside the orbit of the Vedic⁴ religion; *kūṭakṛt*, ‘a forger’, one whose dealings are always fraudulent; *vikalendriyah*, ‘one deformed’, i. e. without an eye, ear &c. (70).

1. Yājñ. II. 22 p. 743 ll, 16-18.

2. Ch. VII. 16.

3. अभिशस्त under an accusation, or under a curse.

4. i. e. not recognising the Vedas as of authority ये वेदस्य प्रामाण्यमेव
नेच्छान्ति, सौगतादयः।

Patito, 'degraded,' such as a Brāhmaicide &c.; *āptah*, 'a relation,' 'relative', i.e. a friendly relative; *arthasambandhi*, 'interested in the subject-matter' i.e. of the subject-matter in dispute; *sahayah*, 'an ally', i.e. one who is helping the disputant; *ripuh*, 'enemy', i.e. enemy of the disputant; *taskarah*, 'a thief', a robber; *sāhasi*, 'a desperado', one who wilfully causes murder &c.; *dṛṣṭadōsho*, 'one who has been found guilty,' i.e. one who has been found to have told a lie in another litigation; *nirdhūtah*, 'an outcaste', i.e. who has been outcasted from the family. By the use of the word *ādya*, 'and like others', are included, the Vedic scholar, the ascetic &c. (71). 10

The Author mentions an exception to the rule¹ 'not less than three':—*ubhayānumatah*, 'with the consent of both' &c. by both i.e. by the plaintiff and the defendant, agreed to; such a one. *Dharmavit*, 'knowing the dharma', is the necessary attribute in common to all the witnesses. Such a one of this qualification, *ekopi*, 'even one,' is a sufficient witness. 15

The Author mentions an exception to the rule² stated in 'women, minors etc.'

Sangrahane, 'adultery' i.e. adultery with women; theft, *pārushye*, 'insult', such as the abusive insult, defamation; *sāhase*, 'in a heinous offence,' such as man-slaughter and the like; *sarvah*, 'all', i.e. even women and the rest devoid of the qualifications for a witness as aforesaid, become admissible as witnesses. This is the meaning. 20

By the use of the word *cha*, 'and also', are included persons possessing other qualifications as stated by Manu and others, and as implied in the word *jñeyā*, 'should be known'. By the use of the word *tu*, 'however', the author specially marks the incompetency as witnesses of ascetics as distinguished from women and others owing to their not being possessed of the stated qualifications. By the use of the word *api*, 'even', are included those stated in the text of Brhaspati: "Both these learned men in the Vedas may be accepted". Here, the witnesses added by inclusion by the word *�*, 'or', and included by the word *ādya*, 'and like others', are particularly stated as established. There by the efforts of the parties, witnesses mentioned in the lists and as set out in treatises are the best, viz. those working for the benefit of (the members of) all the *varṇas*, knowing all the laws, unaffected by (motives of) avarice, by habit observing the rules of purity, both external and internal. 25 30 35

1. Verse 69.

2. Verse 70 above.

In this connection Brhaspati says: “A subscribing witness, one caused to be written, a secret witness, one who has been reminded, a member of the family, a messenger, a spontaneous witness, an indirect witness, a stranger who has (accidentally) witnessed the deed (1). The king, the presiding judge, so also the village—thus have the twelve kinds of witnesses been declared. I will now declare their distinctive characteristics precisely in order (2). One by whom his own caste has been written, and by whom his own and the father's name, as also the place of residence has been written, he should be known as a ‘subscribing witness,’ *Likhitah* (3). One who has been entered by the plaintiff in executing a contract of loan or a like other transaction together with the details of the agreement is called a witness ‘caused to be written,’ *Lekhitah* (4). He, who being concealed behind a partition wall is made to listen to the declarations of the debtor, and exposes the falsity of the denial by stating in detail what had happened, is known as ‘a secret witness,’ *Gudhah* (5). One who after being invited was made a witness in a transaction of loan, deposit, purchase, or the like, and is repeatedly reminded of it, is termed ‘a witness reminded’ *Smritah* (6). One by whom in the matter of partition, gift, or sale, the community is advised, who is on terms of equality with both parties, and who knows the law, such a one is called ‘a family witness,’ *Kulyah* (7). One who being commissioned, hears the statements of the plaintiff and the defendant, who is approved of both, and is a respectable man, is called a ‘messenger witness,’ *Dutakah* (8). One who, while a cause is being investigated, appears of his own accord and declares that he has witnessed the transaction is called ‘a spontaneous witness,’ *Yadrchchikah* (9). A witness who when he is about to go abroad, or is lying on a death-bed, communicates to another what he had heard is called ‘an indirect withee,’ *Uttarasakshi*². (10). He is also called ‘an indirect witness’ who repeats, from his own hearing or from hearsay, the previous statements of actual witnesses (11). One in whom both have placed their trust, or have communicated the business should be known as ‘a secret witness,’ *Gudhachari*; as also one who is in the midst of the transaction (12). Where the statements of the plaintiff and the defendant have been heard by the king himself, he himself may become a witness when there is a dispute between the two (13). If after a suit has been decided, a fresh trial should take place, the Chief Judge together with the assessors, may act as witnesses there, but not in any other case (14). Where there has been a damage or destruction of

1. Chapter VII, 1-15.

2. Of the *De bens esse* evidence of the present system of procedure.

the boundary line around, in such a case even without being specially appointed, the village may no doubt be a witness (15)".

Without specifying the distinction of a subscribing witness and a witness caused to be written, eleven kinds of witnesses have been mentioned by Nārada.

Now those who are incompetent to give testimony: One learned in the Vedas, a hermit, an ascetic. The enraged, a hunter, a slave, one not having faith in Vaidic rituals, the oilman, the blunderer, the village priest, one eating at one man's place, the wanderer, the cognate, the agnate, one proceeding on a holy pilgrimage, one proceeding on a sea voyage, the grocer, one defective, one devoid of a regular course of daily conduct, the impotent, the dancer, one directing in a dance, the Vrātya, a deserter of his wife, one who has discarded the (sacred) Fire, one sacrificing for the unsacrificeable, one living on poisons, a snake-charmer, the poisoner, the incendiary, the ploughman, the Sūdra, one declared to be unfit, one who has committed a sin of a lower order, one extremely dejected, one habitually performing acts opposed to the Vedas, one who has cast off his own duty, a twice-born on whom the ceremony of retirement¹ from the preceptor's home is not performed, the dull in intellect, the sesamum-vendor, one causing deceit, one possessed by an evil spirit, a kinghater, the astrologer, one imprecating curses on others, one with a defective limb, a libertine, one with cracked nails, one whose teeth are rotten, a leper, a treacherous friend, the rogue, the vintner, the sorcerer, the covetous, one fierce in action, one opposed to the S'renis, and Ganas, the idol-maker, one begging by making the bull perform, one inventing false religions and rules of conduct, an apostated ascetic, the royal personage, the seller of the flesh and bones of men and beasts, and of honey, milk, water, ghee and also of the Vedas; the usurer, one engaged in undertaking causing dissensions, the villain, a low servant, one engaged in a dispute with his father, and one causing mutual dissension.

There Nārada² says: "The incompetent witnesses also have in the law-books been declared by wise men to be of five sorts, viz., (1) under a text, on account of (2) depravity, (3) of contradiction, (4) of a voluntary statement, and (5) of intervening decease (157). The S'rotriyas and the like on account of a text; the thieves and the like, on account of depravity; and on account of contradiction, where in a suit there is mutual inconsistency among the witnesses. If among the witnesses summoned by the king in an investigation of a cause the statements differ, these are rendered incompetent on account of contradiction (160). A volunteering

1. समावर्तन—The ritual terminating the study,

2. Ch. I. 157-161.

witness is one who without being appointed comes of his own will and speaks (161), and a witness on account of an intervening decease is one when the plaintiff is dead without his being affirmed."

5 The S'rotriyas and the like who owing to their intensive application to the Vedic study being likely to be forgetful about the facts of the cause in dispute, they should not be made witnesses. If not made, but if they know, they certainly become good witnesses. So it has been said " Both these S'rotriyas should be accepted."

10 He further elaborates the *S'rotriyas*, etc.: "The *S'rotriyas*, devotees, aged persons, and those men who have become ascetics, these are declared as incompetent witnesses under a text, here no reason has been given" (158).

15 If a creditor while in anticipation of impending death has stated to his relations that such and such a person knows that a debtor truly owes the amount, such a one becomes an admissible witness even with an intervening death. When the creditor is dead, and his sons being ignorant, a cause had not been put forth, for the reason, "Who may the witness be"? thus one is an incompetent witness on account of intervening death. Here in the absence of a competent witness, an 20 incompetent, or a prohibited one may be accepted. It should be remembered, however, that one who has emphatically been prohibited, must never be admitted. This is as good as said. (72).

S'ulapāṇi.

25 'Not less than three shall be the witnesses'. To this the Author states an exception

Yājñavalkya, Verse 72.

One conversant with the *Dharma*, and approved of both (sides), may be admitted as a proper witness though alone, by reason of the special qualifications. It is not merely by a knowledge of the *Dharma*, nor also 30 because both the parties consent, that only one (man) is admissible as a witness.

Thus: "Where a witness pure in action, knowing the *Dharma*, whose testimony has been tested, even one may be accepted as good evidence, and particularly in cases of heinous offences," so characterised 35 in the text of Vyāsa¹ by reason of his being agreed to by both the parties, by reason of the varacity of his speech, although he had not given

1. See also *Smṛtichandrikā* p. 76, l. 18.

evidence in other cases before, and thus although prohibited (on that account), becomes admissible as a proper witness.

Nārada¹ : "Those who have been set out as incompetent witnesses viz., slaves, imposters and like others, shall still be witnesses when the importance² of the trial is determined³." Even here these are not all admissible: "Even among them, not a minor, nor a woman, nor one alone, nor a cheat, nor a relation, nor an enemy; as they might depose falsely".

Indeed: In the text of Nārada⁴: "Man-slaughter, theft, an indecent assault on another man's wife, and the two species of insult, are the five kinds of heinous offences", the adultery with women is included in the statement of Sāhasas—heinous offences—why then has it been separately mentioned? The answer is, under the text of Manu⁵: "That act will also be called a sāhasa, which has been perpetrated violently and which has the resulting consequences", with a view to obviate the doubt about the heinous character of a violent act referred to in the text, a separate mention has thus a purpose. (72).

5

10

15

The Author describes the affirmation of the witnesses

Yajñavalkya, Verse 73, (1)

In the presence of the plaintiff and the defendant 20
the witnesses should be affirmed, (in the following⁶ form)

Mitāksharā :—In the presence of the plaintiff and the defendant, Sākṣināḥ, the witnesses, when gathered together—under the text of Gautama⁷: "They (i. e. the witnesses) should not speak singly or without⁸ being asked," should be affirmed, 25
s'rāvayet, as follows. There also a special rule has been laid down by Kātyāyana⁹: "The witnesses being assembled in the middle of the court room, in the presence of the plaintiff and the defendant, the judge

1. Ch. I. 188.

2. i. e. in important proceedings even these may become witnesses.

3. Narada Ch. I, 190.

4. Ch. XIV. 2.

5. Ch. VIII. 333. See the comment of Medhātithi on this verse.

6. viz: verses 73 (2), 74, 75, further on.

7. Ch. XIII. 5.

8. There is a mistake in the print at p. 46. l. 17. for नासमवेता: पृष्ठा read

9. Verses 342, 344, 345.

should examine them after assuring them in the manner as laid down in the following rule (342): "In the forenoon, the judge, being purified, should charge the *dwijas*, their faces being turned towards the North or the East, to give true evidence, in the presence of (the image of) God and the Brâhmaṇas (344). After having summoned the witnesses and bound them down firmly by an oath, he (the judge) should examine them severally, (all of them) being men of established character and acquainted with the facts (of the case) in dispute (345)."

Moreover, a rule has been laid down by Manu¹ for affirming the Brâhmaṇas and others: "A Brâhmaṇa should be required to swear by the (merits generated by his) truth, a Kshatriya by (the means of) his conveyance and by his weapons, a Vaisya by his kine, grain, and gold, and a S'ûdra by (imprecating on his own head the guilt of) all sins". A Brâhmaṇa should be made to swear with the words—"If you tell an untruth, all (merits arising from) your truth will perish"; a Kshatriya—"Your (means of) conveyance and weapons will become futile"; a Vaisya—"your kine, grain and gold will become useless", and a S'ûdra—"if you tell an untruth all the sins will accrue to you".

Here, moreover, an exception has been mentioned by the same² Sage: "The *Viprâs* who carry on the business of cowherds, traders, similarly of mechanics, actors, and also menial servants, or usurpers, the judge should treat as S'ûdras". The use of the term *Vipra* is by an extension, indicative, of Kshatriya and Vaisya. *Actors* (*Kusîlavâh*) i. e. singers.

When (the plea of) a defect in a witness has been raised by the defendant, the decision should be arrived at in the same manner as is done in the case of defects which are capable of being determined upon by actual sight, such as minority &c. In the case, however, of such as are not capable of being so determined, the point should be decided by reference to the evidence of witnesses and the evidence of general repute, and not by that of other witnesses; thus there is no incongruity.

1. Oh. VIII. 113.

2. Manu Oh. VIII. 102.

If the defendant, after having set up a defect in the witnesses, is not able to substantiate it, then he
 * Page 47. should be punished according to the nature of the defect set up. If, however, he establishes the defect, then those persons will not be admitted as witnesses. As has been said¹: "If he (*i. e.* the defendant) do not establish clearly the defect in the witnesses, he should be compelled to pay a fine; if the defect is established, the witnesses should be rejected as persons unfit to be witnesses".

And when after all the witnesses intended to be cited by the plaintiff have been found to be defective, and the plaintiff cannot prove his case by (any) other evidence, then he becomes defeated; *vide* the text.²—"When defeated, he should be compelled to pay a fine as laid down by the law, if the plaintiff is disposed to be indifferent in (the matter of) establishing the truthfulness of his witnesses." The meaning is that if he is desirous (of establishing his case), he should have recourse to other evidence.

How should a witness be affirmed? so the Author explains

Yâjñavalkya, Verses 73 (2), 74, 75.

"Those regions (which are) meant for the perpetrators of sins and of baser³ sins, as also those worlds (which are) meant for the incendiaries and the slayers of women and children, to all these shall he go who gives false evidence. 73 (2), 74.

"Whatever merit you have secured by (your good deeds in) hundreds of previous lives, know that all that (merit) will be his whose defeat you will bring about (by speaking) falsely. 75.

Mitâksharâ:—The meaning is that those regions which are intended for the perpetrators of sins, accessory and baser ones, as also for the incendiaries and the murderers of women and children, to

1. By Vyâsa.

2. Also of Vyâsa.

3. महापातकः. these are.

ब्रह्महत्या स्तुरापाने स्तेयं गुर्वगनागमः । महांति पातकान्याहृस्तत्संसर्गश्च पञ्चमम् ॥

all these shall he go who gives false evidence. Similarly, whatever merit may have been acquired through hundreds of previous births, all that goes to him who is defeated on account of your (having given) false evidence; thus a witness should be affirmed, is the connection.

This (latter), moreover, should be understood as applicable to S'ādrās, as the affirmation by all the sins as laid down in the text¹—"and a S'ādra by all the pātakās"—has also been made applicable to the dwijas who carry on the occupation of cowherds &c. 10 as has been laid down in the text² "(dwijās) engaging themselves as cowherds, grocers &c." The transference to another of the merit acquired through innumerable births, as also the accrual of the results of baser and other sins is not deducible from untruth alone. Thus this text is intended merely as a means of inspiring awe and 15 fear (in the defendant); as says Nārada:³ "By ancient sacred texts, extolling the excellence of truth, and denouncing the sinfulness of falsehood, let him inspire them with deep awe".

Viramitrodaya.

Now the Author states the manner in which witnesses should 20 be examined

Yājñavalkya, Verses 73, 74, 75.

Those attending for giving evidence as witnesses and in the presence of the plaintiff and the defendant, the investigating officer himself should affirm in the manner hereafter to be stated.

25 *Pāpakṛitām*, 'for the perpetration of sins', are meant here the regions (intended) for the perpetrators of sins not specifically mentioned viz. such as the *Raurava* and the like other places. *Agnidānām*, 'for the incendiaries', i. e. who set fire through hatred to fields full of crops, to a store-house, and the like places; *sākṣyam*, 'evidence' i. e. statement 30 to be made as a witness; *anytam*, 'false' i. e. not according to facts, *yo vadet*, he 'who states', *sa etān sarvān*, 'he all these regions', *avapnoti*, 'shall go to'.

By the use of the word *tathā*, 'also', the perpetrators of the lower kinds of sins, and by the several use of the word *cha*, 'and', are included

1. Manu ch. VIII. 88, 113.
2. Manu ch. VIII, 102.
3. Ch. I. 200.

the perpetrators of grave offences, such as, the poisoner, one causing abortion, and the like.

By reason of the text¹: “While a śūdra, by (the imprecation of) all the sins”, in regard to the affirmation of a śūdra witness, the Author says; *sukrtamiti*, ‘merit etc’. The meaning is that whatever religious merit you may have acquired in past births, all that shall perish. Nārada²: “By the truth, should a Brāhmaṇa be affirmed; a Kṣatriya by the means of his conveyance and weapons; by the kine, grain, and gold, a Vaiśya, and a Śūdra by all the sins”.

“Speak the truth”, thus an affirmation should be caused to be made by a Brāhmaṇa, in the form of wealth, viz. ‘this is the truth’. This, however, is in regard to a Brāhmaṇa for whom a middle course is admissible *vide* the text of Gautama³: “Some (declare, that the witnesses) shall be charged on oath to speak the truth. That in the presence of Gods, Brāhmaṇa, and the Royal Court, in the case of others than Brāhmaṇas”. ¹⁵ ‘By one’⁴ is in regard to the specially qualified.

Vāhanam, ‘means of conveyance’, such as the horse, etc.; *ayudham*, ‘weapon’, such as the sword, etc. The affirmation should be made in the form of a touch of these. By the touch of the cow or the grain which are the main support of agriculture, and of gold, the Vaiśya ²⁰ should be affirmed. By the text, (of Nārada), ‘A Śūdra &c. and *S'ukrtam* etc., religious merits’ when the judge causes the affirmation, the party should be made to repeat this ‘all the sins shall accrue to me if I make a false statement.’

By the use of the word *tu*, ‘however’, are excluded the affirmations of the members of *three varṇas*⁵: ‘Speak’,⁶ thus, should he accost the Brāhmaṇa, ‘speak the truth’, thus a Kṣatriya”. So also⁷: “Those of the Vipras who carry on the business of cowherds, traders, also the mechanics, and actors, menial servants, and usurers—the Judge should treat as Śūdras”. “Treat as Śūdras”, i.e., should cause affirmation to be made like the Śūdras. In the case of Kṣatriyas, the rule should be understood by discriminating between men of quality and those without any qualification.

1. of Manu Ch. VIII. 113.

2. Ch. I. 199; See also Manu Ch. VIII. 113.

3. Ch. XIII. 12, 13.

4. एकेतेति—Here Mitramiśra reads the text of Gautama (XIII. 12) as सत्येनैकेन—while in the original it is सत्येनैके—‘according to some, by the truth’.

5. viz. the Brāhmaṇa, Kṣatriya and Vaiśya.

6. Ch. VIII. 89.

7. Ch. VIII. 103.

5 **S'ankha and Likhita :** “By the sons and grandsons according to the orders, the special declaration should be made in the presence of God, Brâhmaṇa, and the masters, one should be affirmed by the touch of the head of the sons and grandsons.” For whichever varna the touch of a particular thing has been stated in other Smṛtis, with that he should be sworn. This is the meaning. (73–75).

S'ûlapâṇi.

Yâjñavalkya, Verses 73, 74.

“Those regions (which are) meant for the perpetrators of sins” &c. thus the Chief Judge should affirm the witnesses in the presence of the plaintiff and the defendant. This, moreover, has a reference to the testimony of a Śûdra. Manu¹ states a special rule: ‘‘Speak’, thus should a Brâhmaṇa be asked to swear; ‘speak the truth’, thus a Kshatriya; by the cow, grain and gold should a Vaiśya be affirmed; a Śûdra, however, with all the sins.” ‘Cow, grain’ &c. i. e. whatever sin accrues for stealing a cow &c. that sin will be yours if you tell a falsehood. ‘With the sins’ &c. i. e. with the sins stated in the text: “Those regions for the perpetrators of sins &c.”—you will be joined. (74).

S'ûlapâṇi.

20 The Author states the form of oath for the witnesses.

Yâjñavalkya, Verse 75.

This also is in regard to a Śûdra. Manu² states a special rule: “The *Vipras* who carry on the business of cowherds, traders, similarly of mechanics, actors, and also menial servants or usurers, the Judge should treat as Śûdras.” The meaning is that in regard to witness evidence, he should ask them to swear like the Śûdras. (75).

When however the witnesses after they are affirmed, do not speak at all what should be done? Anticipating this question the Author says

30 **Yâjñavalkya, Verse 76.**

A person, however, not giving evidence should be made to pay, by the king, the entire debt with the addition of a tenth as a charge thereto on the forty-sixth day. 76.

1. Ch. VIII. 89.

2. Ch. VIII. 103.

Mitâksharâ :—He, who having agreed to give evidence as a witness, after having been affirmed, does not depose anything, should be made to pay by the king the entire debt (*i. e.*) together with interest, to the creditor, *sadasabandhakam*, *with the addition of a tenth*, *i. e.* together with a tenth part. 5

On a refusal to give evidence the debt should be paid. The tenth part, moreover, becomes the king's property, for it has (already) been laid¹ down above that “a debtor should be made to (pay) by the king to himself ten per cent of the amount recovered.” 10

This (rule), however, should be understood to be enforceable after the 46th day is reached. One depositing before that limit should not be made to pay.

This rule, again, applies to those who are not affected by any of the calamities, such as a disease &c. As says Manu²: “A man who, without being ill, does not give evidence in cases of loan transactions and the like within three fortnights shall become responsible for the whole debt together with a tenth part of the whole.” *Without being ill* is indicative by implication (also) of the absence of (other) calamities caused by the king or fate. 15 20

S'ûlapâni.

Yājñavalkya, Verse 76.

Those, moreover, who after being put to an oath viz.: “these regions for the sinners &c.’, do not give evidence, after an interval of three fortnights they should be compelled by the king to pay the amount of the debt together with interest, and a tenth part in addition. The addition of the tenth part being by way of penalty, the king should take (it to) himself. Manu³ states a special rule: “He, to whom, within seven days of his having given evidence, happens (a calamity in the form of) a sickness, a fire, also of the death of a relative, shall be made to pay the debt and a fine.” 25 30

1. Yâjñ. II. 42. p 779 ll. 25–26 above.

2. Ch. VIII. 107.

3. Ch. VIII. 109.

In cases other than that of a money debt, special penalties have been mentioned by Manu¹ for perjury : "(He who commits perjury) through covetousness, shall be fined one thousand; through fatuity, the lowest amercement; through fear, the two middling amercements; and 5 through friendship, four times of that stated before (121); Through lust, ten times has been stated; through wrath, however, treble the highest; through ignorance, full two hundred; and through childishness, one hundred. They declare that the wise men have prescribed these as penalties for perjury". (76).

10 One, however, who though (fully) knowing everything does not agree to give evidence through wickedness, for such a one the Author lays down a rule

Yâjñavalkya, Verse 77.

One who does not (offer to) give evidence as a witness 15 though positively knowing (the facts of the case), that basest of human beings is equal to a false witness in point of sins and (liability to) punishment.

Mitâksharâ :—Moreover, *yah narâdhamah, that basest of human beings, even jânannapi, though well-knowing the (facts regarding the) point in dispute, sâkshyam na dadâti, does not (offer to) give evidence as a witness i. e. does not agree to give, kûtasâkshinâm tulyah, is regarded as equal to false witnesses, in point of sins and the punishment.*

25 The punishment for false witnesses will be² mentioned (hereafter). After punishing the false witnesses the suit should be commenced again. And even if a suit is decided, it should be cancelled if the evidence comes to be known to be false. As says Manu:³ "In every suit where false evidence has been given, the judgement 30 in each (suit) stands cancelled, and whatever has been done (in pursuance of it) is (regarded as) not done."

1. Ch. VIII. 121-123.

2. Yâjn. II. 81,

3. Ch. VIII. 117,

Viramitrodaya.

The Author mentions the nature of the Offence of the witnesses called to depose to the point under decision when not making any statement

Yājñavalkya, Verses 76, 77.

5

That which is bound, i.e., adjusted¹ as being paid to the king is a *bandhah*, 'a charge', in the shape of a tenth part payable to the victor, is *daśabandhah*, 'the tenth as a charge'; together with that the entire debt including the interest, *sakshyam abrutan*, 'one not giving evidence', even though knowing (the facts), *rājñā*, 'by the king', *śatcatwārinśake*, 10 'on the forty-sixth day'—becomes liable to be 'compelled to pay', *dāpyah*.

By the use of the word *tu*, 'however', is excluded the payment before the forty-sixth day.

It may be asked, Indeed, for not making a statement which is false, how can he be made to pay? So the Author states that this is equivalent to making a false statement, and proceeds, *no dadātīti*, 'does not give' &c. *Hi*, 'positively', *jānannapi*, 'though knowing', *yāḥ sakshyam na dadāti*, 'he who does not give evidence', i.e., does not make a statement, *sa nardhamāḥ*, 'that basest of human beings', 20 *kutastakshinām*, 'of false witnesses' i.e., of persons giving false evidence, *pāpaiḥ*, 'with the sins', i.e., with the liability of the penalty to the king being made payable, *tulyo*, 'equal'; *hi*, 'since', he becomes amenable to be compelled to pay that. This is the meaning. The penalty for a false witness will be mentioned²³ hereafter. 25

By the use of the word *cha*, 'and', is included the censurability by the people. By the use of the word *eva*, 'also', the Author discriminates the several penalties stated in the verses before. Therefore, he is liable to pay the debt with a charge of a tenth. If however, he is affluent in wealth, the penalty hereafter² to be mentioned alone will be for him. Other penalties, however will be stated in regard to the different subject-matters. 30

In regard to the period for a plaintiff, Brhaspati says:—"He, however, having cited witnesses, does not still cause them to be examined, within thirty days or three fortnights, loses his suit." The use of the word *wā*, 'or', is indicative of an alternative option in regard to the smallness or greatness of the subject-matter of the dispute. 35

1. as stated in Verse 42 above; see p. 779 lines 25-26,
2. in verses 81 and 82,

Also: "When a plaintiff after having agreed to attend for performing an ordeal, does not attend, in such a case the fraud should not be allowed when any calamity, either caused by God or the King occurs to him. By merely giving up the period he does not become defeated".
 5 'Should not be allowed' i. e. should be dispelled. Here, according to some, the use of the word *hāni*, 'loss' before the word *parajitah*, 'defeated' is in the sense of a defeat. In the suit, a fraud being liable to be dispelled, there cannot be a defeat merely on account of the statements, for a fault may likely be found even in the witnesses cited.
 10 While in the case of statements the suspicion would be of a slight degree. So hold others. (76-77).

S'ūlapāṇi.

Yājñavalkya, Verse 77.

He, who though knowing (the facts), through wickedness does not appear and attend, he should be regarded as equal to a false witness in guilt with the sins and penalties. Kātyāyana says in regard to false witnesses: "A false witness shall stay in the *avichi*¹ hell for a year". (77)

How should the decision be given when the witnesses disagree?
 So the Author says

20 Yājñavalkya, Verse 78.

In (the case of) a disagreement, the testimony of the majority prevails; similarly if the witnesses are equally divided, the evidence of the virtuous; if, however, the virtuous disagree, the evidence of those who are most virtuous should be accepted (as conclusive).
 25

Mitāksharā :—Dwaidhe, in the case of a disagreement, i. e. conflict between witnesses, bahūnām vachanam Rule in the case of a conflict among witnesses. the *testimony of the majority*, grāhyam, should be accepted. When the disagreement is between those who are equal i. e. equal in number, the testimony of those who are virtuous should be accepted. When, moreover, the disagreement happens to be even

1. अवीची—the name of a particular hell; a waveless stagnant cesspool
 See Yajn. III. प्र. 224.

among the virtuous, those who are *guṇavattamāḥ*, *most virtuous*, i. e. accomplished by learning and study and by the observance thereof, as also who are endowed with wealth, male issue &c. The testimony of these should be accepted.

Where, however, the virtuous are few and the others many, the testimony of the virtuous alone should be accepted *vide* the text¹, "With the consent of both, even one person is (enough as) a witness, if he knows the *Dharma*," prominence having been given to the superiority of virtues. What, however, has been said about the incompetency of persons on account of a contradiction, applies to a case where no special preference can be admitted on account of the general equality of all. 5 10

Viramitrodaya.

Now the procedure regarding the statements of witnesses.

There *Kātyāyana*² says: "The witnesses should give their 15 evidence while within the Court premises, and not elsewhere ; this is the rule in regard to all kinds of witness evidence ; but it is otherwise as regards immoveable property ". In the case of the killing of sentient beings, the witnesses should be examined near³ the corpse ; in its absence, near a mark (of the corpse) ; in no other manner should he be examined. With 20 an unperturbed mind, whatever and whenever he may have seen with his own eyes, and which has been remembered (by him), that a witness should state in his deposition. So also, "Where, in the case of defendants belonging to a foreign country, their presence is unsecurable, in such a case a written statement of his deposition, made before 25 Scholars of the three Vedas should be caused to be taken."

Kātyāyana:⁴ "What was seen by persons together, that should be stated as it was; where it was separately seen in different transactions, that should be deposed to separately. Where a transaction came to be known by the witnesses at different times, there each separately should 30

1. *Yājñ. II. 72 above p. 812. ll. 22-24.*

2. Verse, 380.

3. शवसंनिधौ—Mr. Kane in his compilation of extracts from *Kātyāyana* his preferred the reading as शिवसंनिधौ. But शवसंनिधौ is better, and appropriate to o.

4. Verses 394-395.

be examined at a different time ; so says Bhrgu". "Not one transaction" means different transactions. So¹: "Their statements as made naturally should be accepted free from faults; when the witnesses have made their statements they must not be questioned by the king again and again."

5 What should be done when a disagreement occurs in the statements of witnesses examined ? So the Author says

Yājñavalkya, Verse 78.

Of the witnesses, whether examined by one side e.g., by the plaintiff, or examined on behalf of both sides, where there is 'a disagreement', 10 *dwaidhe*, i.e. where their statements contradict each other, *bahūnām*, 'of the majority' i.e., as compared with the opposite testimony of a larger number of witnesses, the statements of witnesses should be accepted. Where the witnesses are men with qualifications and of equal number on both sides, thereby a comparison with the contradicting statements, those 15 who have higher qualifications, their statements should be accepted.

By the use of the word *tu*, 'however', is excluded the admissibility of statements which are opposed to the admissible testimony. Where, on a difference of the evidence of the contending parties, there is an absolute equality then by the rule stated in the text² : "When three witnesses 20 for both sides" &c. an adjustment has been made before.

Of one's own witnesses if there be mutual contradiction, or an entire agreement, then according to the opinion of Misra, another kind of evidence should be resorted to.

Now, some under the text of Kātyāyana viz. : "Of the subscribing 25 witnesses who have been pointed out by the plaintiff, even if one depose falsely, all become incompetent witnesses on account of an incongruity." Others say that the purport of the text of Kātyāyana is that of the three when one speaks a falsehood, another who is equal to him and depositing correctly, and the third being left alone, there a decision cannot be 30 reached through witness evidence, while the purport of the present text is that as the remaining witnesses on the other side are more than one, the decision can be reached from their evidence itself. (78).

1. Verse 393.

2. Yajñ. II. 17; see p. 696. 1. 18.

S'ūlapāṇi.

Yājñavalkya, Verse 78.

When there is a conflict among witnesses, the testimony of the majority should be accepted. When the witnesses are equally divided, the statements of those with better qualifications should be accepted. And if it is the case with all, the statements of the best qualified should be taken as decisive. (78). 5

What testimony of the witnesses leads to success and what to a defeat? (Anticipating this inquiry) the Author says

Yājñavalkya, Verse 79.

10

He, whose witnesses depose to the truth of (the allegations in) the plaint, shall become successful; (and) sure defeat will be his whose witnesses speak to a falsehood.

Mitākṣharā:—yasya, he whose, i. e. of the plaintiff, 15
pratijñām, *plaint*, containing the particulars

Successor about the subject-matter, its kind, measure &c.,
defeat through sâkṣhiṇah, the *witnesses*, depose to satyām, as
witnesses. true, e. g. with the words. “This is true, we
know”, becomes jayi, *successful*.

Of a plaintiff, however, whose plaint, anyathā, they contradict 20
i. e. testify in a contradictory manner e. g. (with the words). ‘This
is false’ his defeat, parājayah, will be sure, dhruvah i. e. certain.
Where, however, on account of forgetfulness or other (cause) the 25
witnesses do not substantiate either the affirmation or the negation of
the allegations in the plaint, in such a case the decision should be
given by (recourse to) other (means of) proof; and the king should
not question the witnesses again and again. Only such testimony
should be recorded as was given (by the witnesses) spontaneously. As
has been said¹: “Such evidence of these (the witnesses) should 30
be admitted as may be spontaneous and free from fault; after,
however, the witnesses have made their declarations as above, they
should not be questioned again and again by the king”.

1. By Kātyāyana verse. 392.

Viramitrodaya.

Now the Author mentions the kind of evidence which leads to a success or a defeat

Yājñavalkya, Verse 79.

5 *Yasya*, 'whose', i.e. of the plaintiff, *pratijñām*, 'plaint', *sakshiṇah*, 'the witnesses', *satyām brāyah*, 'depose to the truth', i.e. speak according to the facts, *sa*, 'he', i.e., the plaintiff, *jayi bhavet*, 'shall become successful'. *Anyathāvādinah*, 'speak to a falsehood', i.e., those who depose to the falsity of the plaint, *yasya*, 'whose' witnesses, *tasya*, 10 'of him', *dhruvam*, 'sure', i.e., of a certainty, is *parājayah*, 'a defeat'. This is the meaning.

Some, however, say that the witnesses, i.e., of the plaintiff who do not depose to the truth (of the plaint); that is improper. In a trial at law, all subversions are to be removed, and by merely non-deposing, 15 a defeat would be impossible; that is the point.

Here, even as to a matter deposited to by the witnesses, if within seven days a disease or a like calamity occurs to him, the party whose witnesses depose, gets a defeat—*vide* the text of Nārada¹, viz.: "He, to whom, within seven days of his witnesses having given evidence, 20 happens (a calamity in the form of) a sickness, a fire, or the death of a relative, shall be made to pay the debt, and a fine also."

In regard to the statement of witnesses Vyāsa says: "If the statement (of a witness) is not defective in regard to time, form, age, the thing, country and the caste, the point at issue may be declared as 25 established." Brhaspati²: "He, the statement in whose plaint has been entirely deposited to by the witnesses, that man will be (declared) successful; if otherwise, witness evidence will not lead to a conclusion."

'If otherwise', i.e., in the absence of depositing to the entirety. This, however, is possible in two ways, by not depositing, as also by not 30 depositing as expected. Another (possibility) is also of four kinds, by depositing to less, by depositing to more, by depositing to one's ignorance, as also by depositing to the opponent's case. There, in all the cases, the point at issue remains unestablished. On the other hand, in the case of the first and the last, other means of evidence must be resorted to, and 35 not that by that much alone there could be a decision as to its defeat.

Now the statements of witnesses: Thus Nārada³: "When in regard to the matters set out, a witness who has come to depose does not

1. See Manu Ch. VIII. 109.

2. Ch. VII. 32.

3. Ch. I. 232.

depose consistently and without a flaw, that cannot be regarded as evidence." Some say that where he deposes as to the thing, but fails in regard to the portion as to the quantity, there in regard to the portion of the quantity, other evidence should be resorted to. According to the Sampradâya, other evidence may be taken even (if it be) in regard to a portion of the thing. 5

For, "where a party's witnesses depose to less or even more, that even may be regarded as non-evidence ; this has been declared to be the rule as to witness evidence". When a hundred is in dispute, a statement as to two hundred, leading to a certainty of falsehood, is as 10 good as not said. It is not possible in the case of a plaintiff, by reason of constant company and repetition, that his witnesses who are (thus) reminded, should forget. In the case of a statement as to fifty, in regard to more than that, it is as good as not said. In regard to the portion deposited to, however, it is certainly decisive, so opines the 15 revered Mis'ra. The (author of the) Smrtisâra, and others, however, hold that in regard to the entire claim even, there should be other evidence.

Where 'a witness who has heard', however, when asked says "I did not hear this matter", there the point is not established, there being an absence of a concurrence between the (words of the) deposition and the matter in issue. On the other hand, like an eye-witness, where a witness deposes to the very matter at issue from what he had heard, there the claim becomes established. In the case, however, of a taint as to the unreliability of his words, he certainly does not deserve to be admitted as a witness. This is the meaning. (79). 25

S'ulapâni.

Yājñavalkya, Verse 79.

He, the substance of whose plaint, his witnesses support and declare 'this is true', that man shall be (declared) successful. He whose witnesses speak otherwise, his defeat is certain ; *vide* the text of Vyâsa : 30 "A false claimant is defeated". So Nâradâ¹ : "Regarding the place, time, age, subject-matter, quantity, shape and kind, where there is incongruity, that witness evidence is also worthless". (79).

The Author mentions an exception to the rule² : "sure defeat will be his whose witnesses contradict the plaint." 35

1. Ch. V. 175.

2. Contained in the last verse No. 79. p. 871.

Yâjñavalkya, Verse 80.

Even after evidence has been given by witnesses in the matter under consideration, if more qualified witnesses, or double (than those first examined) depose otherwise, the first witnesses become false.

5 Mitâkshârâ :—When evidence has been given by *witnesses, sâkshibhih*, qualified as (stated) above, *sâkshye*,

Exception to the above. *in the matter under consideration, i. e., the allegations made by himself (and) which is contradictory to the allegations in the plaint, yadyanye gunavattamâh, if others more qualified, than the first, dwigunâ wâ, or double in number, depose otherwise, anyathâ: i.e., in support of the allegations in the plaint, then the first witnesses, pûrvasâkshinah, become false, kûtâh i.e., prejurors.*

10 15 Indeed this is improper. For, after the evidence was given by witnesses who were fixed upon as the means of

An objection. proper proof after their competency was determined by the plaintiff, the defendant, and the presiding officer of the court, to seek after another mode of proof would involve the fault of incongruity as also per the text of Nârada¹:

20 “When a lawsuit has been decided, evidence becomes useless, whether it consists of documents or of witnesses, if such

* PAGE 49. evidence was not announced at a former stage of the trial. As the (fertilizing) capacity of the rainy

25 season is thrown away on crops which have ripened, even so evidence becomes useless in suits which have been decided.

The answer. To this the answer is: when the plaintiff relying on his own internal consciousness about (the truth of) the allegations in the plaint, and thus regarding as unreliable the testimony of witnesses who although till then are undiscovered as vicious, yet as it contradicted the plaint, he conceives a defect even in (his own) witnesses, then in such a case, how can other evidence be excluded? It has also been

1. Ch. I. 62-63.

said¹: “ He whose sense of perception is faulty, as also he who has been once found to have told a lie, that man indeed is a bad witness ” e. g. although a defect in an organ such as the eye &c. has not been (actually) discovered, still as such a defect in the organ is (still) inferred on the strength of the knowledge thereof by the disagreement with the plaint, so here also on the strength of the rule that the evidence of witnesses should be tested by means other than the mere examination of witnesses, Kātyāyana² has said “ The truth of the words uttered by witnesses should be examined with the help of the Councillors.”

10

“ When evidence is free from (all) faults then (alone) their words should be tested by the principles of justice ; and a plaint which has been found to be correct by comparison with testimony (so) refined, is considered as a true plaint ; this is the (established) rule³. ” When Evidence in the form of⁴ witnesses is (found to be) free from all faults by reference to the rule⁵ “ nor those interested in the suit, nor friends &c. ” then (only) *their words i. e.* the words of the witnesses⁶ should be tested. And the testing of the words is to be by establishing the truth of the plaint, vide the text : “ A clause is refined by (establishing its) truth. ” From the evidence thus refined, and from the words thus tested whichever (allegation in the) plaint⁷ is established, that is considered as a true plaint having been found as such. This is the rule, *i. e.* the rule of the lawyers. The meaning is that the evidence is considered as true in the absence of any data for inferring a fault in the senses (of perception).

15

20

25

1. By Gautama (see Bālambhattī); or it may also mean, ‘ he whose evidence is faulty ’. Vijnāneśvara, however, takes it to mean ‘ an organ of perception.’

2. Verse, 340.

3. Kātyāyana verse, 409.

4. *i. e.* new witnesses.

5. Narada ch. I. 177. The full text of this rule is as follows:

नार्थसंबंधिनो नापा न सहाया न वैरिणः । न दृष्टदेषाः प्रट्ययाः साक्षिः प्रतिदूषिता; ॥ १७७.

Tr: “ Those must not be examined as witnesses who are interested in the suit, nor friends, nor associates, nor enemies, nor notorious offenders, nor persons tainted (with a heavy sin) ”.

6. *i. e.* Witnesses first examined.

7. Lit. when once success in the case has been declared.

After having discussed the witnesses cited as evidence by the plaintiff himself, how can other evidence be accepted as proof? There is no error here. Since by mentioning the rule: "He, who having adduced stronger proof resorts to a weaker one,

5 Another objection should not be allowed by the officers of the court and answer to resort to it again when once the case has been determined", Kātyāyana¹ has indicated the admission of another proof before yet the success in the case is determined, since fresh evidence is prohibited at a period subsequent

10 to the determination of success in a case. By stating the rule²: "When a lawsuit has once been decided, evidence becomes useless", Nārada also has interdicted fresh evidence only after the determination of the success in a suit and not even before. Therefore it has been established that fresh evidence may be admitted on behalf of a party

15 who is dissatisfied with his evidence even after 'evidence was given' by witnesses.

In such a state of things if there are witnesses who are more qualified than, or are twice in number to, those whose evidence was recorded, or if those cited before are not near (and available) then (the 20 testimony of) these latter alone should be accepted as reliable evidence, the rule contained in the text³: "Whatever witnesses declare quite naturally, that must be received as evidence acceptable in trials", having a universal application in all suits. Also *vide* the text of Nārada⁴: "When a lawsuit has been decided, evidence becomes useless whether 25 it consist of a document or witnesses, unless it was announced at a former stage of the trial". If, however, those who had been indicated at the earlier stage are not likely to be available, witnesses of a like description should be accepted even though they were not mentioned before, and not an ordeal, *vide* the text⁵: "When witnesses are 30 available a wise man should avoid divine evidence." In the absence of these an ordeal may be admitted as evidence. After this the plaintiff must not be allowed to adduce fresh evidence even though he be dissatisfied, as *per* the text of Manu, but the trial should be concluded.

1. Verse. 221.

2. Ch. I. 62.

3. Of Manu Ch. VIII, 79.

4. Ch. I. 62.

5. Of Manu.

Where, however, the defendant, regarding the witnesses to be faulty on account of their disagreement with his own internal consciousness, is dissatisfied with the witnesses, in such a case there being no scope for a defendant to adduce evidence, the (veracity of) witnesses should be tested by the occurrence of any calamity, either on account of the King or Fate, within the interval of seven days. In such a case, moreover, if they are found to be vicious they should be made to pay the amount of the loan in dispute, and should also be punished, having regard to the amount of the claim in dispute. If, however, no fault is found, the defendant should rest satisfied with that much, as says Manu¹: "He, to whom, within seven days of his witnesses having given evidence, happens (a calamity in the form of) a sickness, a fire, or the death of a relative, shall be made to pay the debt and a fine also". This, moreover, should be observed as an exception to the rule² "He whose witnesses depose to the truth of a plaint shall be successful" in reference to the defendants. 10 15

Some explain the text "even after witnesses have given evidence &c." as meaning that, after the witnesses cited by the plaintiff had deposed favourably to the plaintiff, if the defendant by means of more virtuous or a double number of 20

* Page 50. witnesses establishes the opposite of what was said by the first witnesses, then the witnesses of

the plaintiff come to be considered as false. This is wrong; because it would be improper for a defendant (to be called upon) to adduce evidence. Because, a plaintiff is he who affirms a point (which is) 25

to be proved; (and) his opponent, who affirms the *negation* thereof is the defendant. Here, therefore, the (necessity of the) proof of the *negation* having a dependence relative upon the proof of the *affirmation*, while (the proof of) an *affirmation* being independent of that of a *negation*, it is proper that the affirmation should be 30 (considered as) the *Sâdhyâ*³; by its very nature a *negation* is

1. Manu Ch. VIII. 109.

2. Of Yājñavalkya II. 79, p. 871.

3. Lit. that which is be established;—a point to be proved. The meaning is that the burden of prof lies upon him who asserts that a certain thing exists. This is in a line with the first elementary principle of the Burden of proof: cf. Section 101-104 of the Indian Evidence Act.

impossible to be ascertained by witnesses and other (means of proof), and hence it is proper that the burden should lie upon the plaintiff alone.

Moreover, it is a universal rule that the burden of proof is regulated in accordance with (the nature of) the answer: "When *res judicata* and 'special exception' are set up as a combined plea, the defendant should exhibit proof; in (the case of) the plea of denial, the plaintiff (should exhibit it). In the case of an admission, however, it does not become necessary (at all)." Never, however, will the burden lie on both in the same trial, *vide* the text¹: "In one suit the burden of proof cannot lie on two litigants". Therefore the suggestion² that defendant's witnesses should (be allowed to) testify when they are more qualified or double, (in number) is improper.

It may be said again³ (granting all this) where two persons both coming as plaintiffs, each saying 'I got this as inheritance from a (deceased) relative' 'I got this as inheritance from a (deceased) relative', without having ascertained the priority (of their claim) as to the point of time, in such a case when there are witnesses on both sides, a question might arise as to whose witnesses should be accepted, having regard to the text⁴: "When two persons quarrel for a point, and both have witnesses, the witnesses of him who sets up a prior claim should be heard", the rule deducible would be that the witnesses should be examined for him who first appears⁵ as a complainant? And the procedure (contained in the text) "Even after witnesses have given evidence &c." is intended as an exception to it. And therefore when (in such

1. Of Kâtyâyana verse, 190.

2. *viz.* as to the meaning of this text of Yâjñavalkya.

3. It may be noticed that this objection is raised after the refutation of the last objection, by reference to the text न चैकस्मिन्वादे &c. The objector says—admitting this to be correct, what if both the litigants are placed in the position of a plaintiff? In such a case, he maintains that this text should apply; but this too has been refuted in the end by Vijñâneśvara.

4. Of Nârada I. 163.

5. Mark the gloss of बालंभट्टी 'प्राप्तिरूपत्वज्ञानेऽपि निवेदनपूर्वत्वज्ञानेन तत्र निर्णयः इति'

Yājñavalkya] *Mitāksharā & Viramitrodaya—When witnesses appear separately.* 879
Verse 80.

a case) the witnesses of both the prior and the second complainant are equal in merit and number, the witnesses of the first complainant alone should be examined ; where, however, the witnesses for the later complainant are more meritorious or are double in number, then the witnesses for the defendant should be examined. And thus there would be no necessity for making a *negation* a *sādhyā*, as both parties here set up an affirmative case, and as also the answer is of a kind different from the four varieties¹ of an answer, and thus there is no (necessity for the) adjustment² of the burden of proof. And as even according to the *Siddhāntin* the same plaintiff may be put to a double proof in the same trial, so there would be no contradiction in the plaintiff and the defendant being put to two proofs³ (respectively). 5 10

(To this the answer is) :—Even this the great teacher⁴ does not admit. Such an import is not obtainable either from the express or implied meaning of the term *even* (*api*) in the text : “ *Even* after the witnesses have given evidence.” So enough of prolixity. 15

Viramitrodaya

Of the witnesses who have arrived simultaneously, on a contradiction among them, the rule as to the greater or less potentiality of these has been stated. Now the Author states the rule when they appear separately 20

Yājñavalkya, Verse 80.

Sākṣhibhīḥ sākṣhya uktepi, ‘even when evidence has been given by witnesses’, and as compared with these witnesses, better qualified as mentioned before, *anye*, ‘others’, of equal number, or also double the number, *i. e.*, witnesses, if *anyathā*, ‘otherwise’ *i. e.*, contradictory to the witnesses examined before, *brūyuh*, ‘should depose’, then, *purvāsākṣhiṇah*, ‘the first witnesses’, *Kūṭah*, ‘false’ *i. e.*, false deponents, *syuh*, ‘become’. By the use of the word *wd*, ‘or’, in the case of casual witnesses, preponderance in number has been properly adjusted. 25 30

1. See p. 661. lines. 17–19.

2. Cf. विषयव्यवस्था See note 4 on p. 708 above.

3. Here ends the objection.

4. आचार्य *i. e.* विश्वरूपाचार्य.

880 *Virami., Sūla. & Mitākṣharā.—Punishment for false evidence.* [*Yājñavalkya*
Verses 80-81.]

This, however, before the decision is reached. "When having abandoned strong evidence, one resorts to weak one, he should not again be allowed to resort to that evidence when the members of the Court have come to a decision as to the success (in the proceeding)", 5 this text of Kātyāyana¹ having an application after the (result as to the) success. The weakness of the evidence being expressed by the word *tyaktvā*, 'having abandoned', as indicative of a deliberate abandonment, points to the weakness also of the evidence indicated before, and so is the prohibition. (80).

10

*S'ūlapāṇi.**Yājñavalkya, Verse 80.*

After the witnesses have given evidence, if those superior in number or with higher qualifications depose to the contrary, then the first witnesses are (to be regarded as) false witnesses. (80).

15

False witnesses have been indicated. The Author (now) mentions the penalty for these.

Yājñavalkya, Verse 81.

The suborner as well as the (false) witnesses should be separately punished with a fine double the amount in dispute. A Brāhmaṇa, it has been laid down, should be banished.

Mitāksharā :—He who by pecuniary bribes &c. prepares false witnesses is (called) a *suborner*, *kūṭakṛt*, Punishment for Those, *sākṣhiṇāḥ cha*, witnesses also, who are 30 false witnesses. thus false, should each separately be punished with a *dāṇḍam dwigunaṁ*, fine double the amount, *vivādāt*, in dispute, i. e. that which has been prescribed for (the party suffering) a defeat in the case of a defeat in the suit. A Brāhmaṇa, however, should be *vivāsyāḥ*, banished, i.e. expelled 35 from the kingdom, (and) not fined.

This rule, moreover, is to be observed in cases where special motives such as covetousness &c., do not appear, as also when the witnesses are not habituated (to perjury). When, however, a special

1. Verse, 221.

motive such as covetousness or the like is apparent, or the party is habituated, the rule has been laid down by Manu¹: "He who commits perjury through covetousness shall be fined one thousand (panas) ; (he who does it) through confusion² (should be punished) in the (punishment laid down for the) lowest Sāhasa ; (if he does it) through fear &c. the punishment should be (the same as for) the two middle (Sāhasas,) and (if he does it) through (feelings of) friendship, four times the amount of the lowest Sāhasa. (121). He who does it, through lust shall pay ten times the amount for the lowest Sāhasa (but), he who does it through wrath, three times the last (of the Sāhasas) ; (he who does it) through ignorance, full two hundred ; but (he who does it) through childishness one hundred (panas). (122)." Here, *covetousness* (Lobhah) means greed for money : *Confusion* (Mohah)—a distorted impression. *Fear* (Bhayam)—acute fear. *Friendship* (Maitri)—excess of attachment. *Love* (Kāmah)--desire for an intercourse³ with a woman. *Wrath* (Krodhah)—non-toleration. *Ignorance* (Ajñānam)—indistinct knowledge. *Childishness* (Bālis'yam) i.e. non-commencement of knowledge. By thousand &c. are intended (to be indicated) the copper *panas*.

Similarly⁴: "A just king should, however, fine and banish (men of) the three (lower) orders⁵ who give

* Page 51. false evidence ; a Brāhmaṇa he should (only) banish". This, moreover, is applicable to (a

case of) a habitual (offence), as the present tense has been used in the term : "Kurvāṇān (कुर्वाणान्), Three classes (trīn varṇān) i.e. those commencing with the Kshatriya order, should be fined as before, and *banished* (pravāsayet) i.e. should be killed ; as the word *prawāsa* is used in the sense 'to kill' in the *Artha-s'āstra*, and as this text is in the nature of an *Artha-s'āstra* text. There also the (particular kind of) *prawásana* viz., cutting off of the lip or the tongue, or deprivation of the life should be observed by regard to the subject-matter of the (particular) perjury (in question). A Brāhmaṇa, however, should be fined and *banished* i. e. expelled from the kingdom. One from

1. Ch. VIII. 121-122.

2. मोहः.

3. ख्रीव्यक्तिकराभिलाष, is a better reading.

5. Varṇān वर्णान्.

4. Manu Ch. VIII, 124.

whom clothes have gone is a *vivāsāh*. Having prepared the *causal* form indicative of ‘one who causes (a man) to be without clothes,’ the present form is obtained by dropping¹ the *ti*—by analogy to the rule (in the Vārtika): “When there is a suffix at the end of words ending in इ the change that takes place is the same as that which takes place when the suffix इष्ट is at the end” ‘Should make naked’ is the meaning. Or, that in which one lives is a *vāsa* (वासः) i.e. a house. *Vivāsayet* therefore would mean—should demolish his house.

Even in the case of a Brāhmaṇa, when no special motive such as covetousness &c. is known, nor a habit, only the fine specified in each place respectively (is to be imposed). In the case of a habit, however, there is a pecuniary punishment, as well as banishment. There, also, the rule as regards the several punishments of *vivāsana*, stripping off of all raiments, demolishing the house, and banishment from the kingdom, should be observed having regard to the surrounding circumstances such as the caste (of the party), the amount &c. If when no special motive such as covetousness &c. is known, as also when no habit is found, in the case of perjury regarding a small claim, even for a Brāhmaṇa there will be a pecuniary punishment as is the case with a Kshatriya. When, however, the claim is a large one, banishment from the kingdom is (the punishment). Here in the case of a habit, the rule of Manu should be observed even in the case of all.

1. i. e. अस् in विवासस्. टि “अचोऽन्त्यादि टि” (व्या० सू० ११६४). “The final portion of a word, beginning with the last among the vowels in the word, is called टि”. It is that portion of a word which is included between the last letter and the nearest vowel. e.g. in अश्चित् the portion इत् is टि; as also here in विवासस्, the portion अस् is टि.

इष्ट or इष्टन्—“अतिशायने तमिविष्टनौ” (व्या० सू० ५३५५)—“When the sense is that of surpassing, the suffixes तम् and इष्टन् are used. निच्च—the Causal.

Here the formation of the word विवासयेत् is explained as follows: विवासयेत् i.e. should deprive him of his clothes विवाससं करोतीति would be विवाससयति; but the अस् in विवासस् is dropped by analogy to the rule in the case of the तद्विता इष्ट contained in the वार्तिक “प्रातिपदिकाद्वात्वर्यै बहुलमिष्टवच्.” e.g. in the case of लघु we get लघिष्ट by dropping the टि, so here also by dropping the टि i.e. अस् in विवाससयति we get विवासयति.

It should not, moreover, be supposed that there is no pecuniary punishment for a Brāhmaṇa. For if there were no pecuniary punishment, corporal punishment being prohibited, it would happen that even in petty offences either the punishment of stripping off of clothes, demolishing the house, branding, or banishment would follow, or that there would be no punishment at all. And this would be opposed to the text¹, "In the case even of persons belonging to all the four orders, for those who do not perform an expiation, legal punishment either corporal or affecting property should be ordered". Also *vide* the text²: "A Brāhmaṇa who carnally knows a guarded Brāhmaṇī against her will should be fined a thousand (panās)". As to the text of S'ankha: "Of the three (higher) orders, (the punishments of) deprivation of property, corporeal chastisement, imprisonment, ordeal, banishment and branding, are ordained for a Brāhmaṇa". Here 10 on account of the contiguity of corporal chastisement the (punishments of the) deprivation of wealth or of the entire property are intended. For, the (punishments of) corporal punishment and deprivation of entire property have been mentioned together in the text³: "As for the Corporal punishment, it begins with (simple) obstruction and extends as far as the deprivation of life; while the pecuniary punishment begins with a *Kâkini*⁴ and extends similarly to the loss of the entire estate". As to what has been said⁴ "He should be expelled out of the kingdom leaving all his property (to him) and himself untouched," it has a reference to the first act of the 15 nature of Sáhasa, and not to all (kinds of) offences.

A corporal punishment, however, does not ever occur for a Brāhmaṇa as Manu⁵ has stated generally viz: "Let him (i. e. the king) never slay a Brāhmaṇa, though he is immersed himself in all (kinds of) sins". Moreover Manu⁶ says: "No greater crime is 20

1. of Kātyāyana, verse. 484.

2. Of Manu Ch. VIII. 378.

3. Nârada Appendix 54. And also of Kātyāyana verse. 484.

4. The smallest coin. e. g. a Cowrie. It is also described as a money measure, 20 cowries or $\frac{1}{4}$ of a Panā as also that of a Mâsha.

5. By Manu Ch. VIII. 380.

6. Ch. VIII. 381.

possible on earth than slaying a Brâhmaṇa ; a king therefore must not even concieve in his mind the idea of killing him (a Brâhmaṇa)".

S'ûlapâni.

The Author states a penalty for a false witness

5

Yājñavalkya, Verse 81.

Kūṭakṛt, 'The suborner', i. e. one who causes false evidence to be adduced, such as the Kṣatriya and others, each should be punished with double the amount of that in dispute, as a fine. A Brāhmaṇa, however, with undiminished property, is to be exiled from the country. To that effect says Manu¹: "Never, on any account, should one slay a Brāhmaṇa, although (he is) immerced in all (kinds of) sins; (the king) should expel him out of the country, with the entire property undiminished². A just king should banish from the kingdom after punishment, the member of the three *Varnas* uttering false evidence; a Brāhmaṇa however should be banished", and various similar penalties varying according to the offences and the *Varnas*, have been stated by Manu, but are not stated here for fear of prolixity.

Yâjñavalkya, Verse 82.

He who having been called upon and sworn to give evidence conceals it from others under the influence of passion, should be made to pay an eight-fold fine ; a Brâhmaṇa, however, should be banished.

Mitâksharâ :—Moreover, he who ever, who having accepted to give evidence as of a witness, and sâkshyam s'ravitah, having been sworn to give evidence along with other witnesses, at the time of his deposition, tamovrto, being under the influence of passion i. e. with his mind seized with the feeling of anger &c, nihnute, conceals, sâkshyam his evidence, annyebhyah, from others i.e. witnesses with the words: "I shall not be a witness here &c."

30 Penalty for not giving evidence when knowing (the facts).
35 that man dâpyâh, should be made to pay a fine ashtaguṇam, eight-fold of the amount of the fine (payable) in case of a defeat in the suit. A Brâhmaṇa, however, who is unable to pay an eight-fold amount as fine should be banished. The penalty of banishment, however, should be

1. Ch. VIII. 380.

2. Ch. VIII. 123.

observed to be either the stripping off of clothes, the demolition of the house, or the expulsion from the kingdom according to the nature of the subject-matter of the suit. In the case of others, however, when an eight-fold amount as fine is not possible, the penalties of doing such labour as is appropriate to the caste, fettering in chains, or incarceration in jail, and like others should be observed. And this, again, should be followed (to be the rule) even in the last verse.

5

When all withhold evidence, then the liability of all is equal. When, however, having given evidence, they speak falsely, then they should be punished, regard being had to the exigencies (of each case). As says Kātyāyanā¹: “Having once given evidence, those who depose to the contrary are liable to be punished, (as) they are guilty of prevarication”.

10

Nor, moreover, ought the witnesses cited by one be approached in secret by another. As says Nārada²: “One should not approach in secret a witness cited by the other (side), nor should he (try to) win him over through other (means). A party resorting to such practices is (liable) to lose.”

15

20

Viramitrodaya.

The Author mentions the penalty for false witnesses

Yājñavalkya, Verses 81 & 82.

Kūṭakṛtah, ‘The suborners’, fraudulently carrying on transactions, in short, who make false statements; those witnesses who are of such character, these *prthak prthah*, ‘separately’ i. e., each one, *vivādāt dwigunam*, ‘twice the amount of that in dispute’, should be compelled to pay as *danda*, ‘penalty’ i. e., should be punished. In some places the reading is *कूटसाक्ष्यात्* *Kūṭasākṣyākṛta* ‘who have been induced to give evidence fraudulently’.

25

30

This, moreover, by reason of the many causes such as covetousness and the like as indicated by the word *tathā*, ‘also’, to one who has been unnecessarily defeated, an amount of money equal to that in dispute should be caused to be paid as a penalty. This is the substance.

886 *Virāmi, S'ūlapāṇi & Mitākṣhara - Various grades of punishment.* [*Yājñavalkya*
Verses 82-83]

A Brāhmaṇa, however, should be driven out of his country, *Smṛtāḥ*, so it has been declared in the *smṛtis*, and is not to be punished by a money fine.

5 *Yah*, ‘he’, however, *sākṣyam*, *anyebhyah śrāvitah, śrāvitāvān*, ‘having been called upon and sworn to give evidence by other’ and ‘after agreeing’, i.e., having declared ‘I know this fact’, afterwards *tamovṛtah*, ‘under a feeling of anger’, i.e., with his mind oppressed with a feeling of anger, fraudulently, &c., *sākṣyam niḥnute*, ‘conceals his evidence’, i.e., at the time of making the statement makes trouble, that man should
10 be compelled to pay a penalty of eight times the amount in dispute. For this kind of offence also, a Brāhmaṇa should be banished only ; by the use of the word *tu*, ‘however’ has been excluded a pecuniary penalty.

15 Vishnu¹ says : “For false witnesses, the confiscation of the entire property”. This moreover has a reference to those who are so by habit.
Manu²: “(If) from covetousness, he should be fined one thousand (panas); (if) through confusion, however, the first amercement; (if) through fear, the two midling (amergements) should be the penalty; (if) through friendship, four times the first (121). (If) through lust, ten times the first, while (if) through anger, three times the last; (if) 20 from ignorance, full two hundred (panas), and (if) through childishness, one hundred (122). The wise have mentioned these as the punishments for false evidence (81-83).

S'ūlapāṇi.

Yājñavalkya, Verse 82.

25 In the matter of evidence sworn and concealed from others, for him is a penalty of eight times the amount in dispute. The rest is clear.

Not giving evidence, as also giving false evidence has been generally prohibited of the witnesses. The Author mentions cases by way of exception to it .

30 *Yājñavalkya, Verse 83 (1).*

Where men of the (four) orders are (likely) to suffer capital punishment, there a witness may speak an untruth.

1. Ch V. 175.

2. Ch. VIII. 121, 122, 123.

Mitākṣhara :—Where, if a fact is deposed to, there is the likelihood of a capital punishment (being given) to men of the four orders, varṇinām i. e. of the S'ūdra, Vais'ya, Kṣatriya and Vipra classes, sākshi anṛtam vadet, a witness may speak an untruth, i. e. should not speak the truth. And by this prohibition against true evidence a permission for refusing to give evidence, or for giving false evidence is given for witnesses of whom it has been prohibited before¹. 5 10

Where e. g. in the case of a complaint founded on suspicion, by speaking the truth a varṇi is likely to suffer capital punishment, and by speaking an untruth no one is to suffer capital punishment, there an untrue testimony is permitted. Where, however, by speaking the truth either the plaintiff or the defendant is likely to suffer capital punishment, and also by depositing falsely one of the two is likely to suffer capital punishment, there a refusal to give evidence is allowed, provided the king permits. If, however, the king does not let off in any case unless testimony is given, then an incapacity for a witness on account of depravity should be incurred. If that too is impossible then the truth alone should be spoken. For by giving false evidence the taint of a capital punishment for a varṇi, as well as that of giving false evidence is incurred. By speaking the truth, however, there would only be the taint of a capital punishment for a varṇi. In such a case, moreover, an expiation should be made according to 15 20 25 the Sāstra. 25

(It may be said) then there would be no sin in giving false evidence or in maintaining silence, as the same has been permitted by Sāstra, so the Author says

Yājñavalkya, Verse 83 (2.). 30

For purification from that (sin), the special oblation of rice known as the Sāraswata should be presented by the twiceborn.

1. Yājn I. 82 p. 884.

Mitâksharâ :—Tatpâvanâya, for purification from that (sin), i.e. for the atonement of the sin on account of the false evidence, or a refusal to give evidence, Sâraswata charu, the rice oblation, nirvâpyah, should be presented, by dwijâs, the twice-born, each 5 separately. A sacrifice wherein the presiding deity is the goddess Saraswati is (called) a Sâraswata: The word *charu* is well known as indicative of boiled rice which is hot and from which water has not been allowed to flow out (while it was boiling).

Here this is the meaning: False evidence or a refusal to give 10 evidence which has been prohibited for witnesses before has here been sanctioned. This expiation is in reference to the transgression of the rules generally prohibiting the giving of false evidence or not giving any, and as is to be found in the texts: “One should not tell an untruth”; “a man incurs a sin by not giving evidence, as also by 15 giving a distorted one¹”.

It may be objected that this text which is in the nature of a sanction is meaningless inasmuch as even with this text allowing witnesses to tell an untruth or not to speak at all, the text propounding the sin incurred by reason of the infringement of the general rule 20 prohibiting witnesses from either speaking an untruth or not speaking at all, remains where it was. But it is not so. For the sin accruing from the infringement of the rule prohibiting witnesses from telling an untruth or not speaking at all is great, while that due to the infringement of the general rule is small, and thus the text in the 25 nature of a permission has a meaning.

Although in other cases the removal of (the taint of) a greater sin would also secure the removal of the smaller sin which is (only) a part (of the greater one), still here by reason of the (special) sanctioning text, as also by reason of the rule as to expiation, it 30 appears that by the removal of the greater (sin) the smaller one is not removed although it is a part of it.

This text should also be understood as a permission for speaking an untruth, or not speaking at all, in the cases such as those of travellers and others where there is the danger of a capital

1. Manu Ch. VIII. 13.

punishment being passed upon a *warni*. And as there is no other (special) prohibition, there would be no (necessity for an) expiation. In case the real facts are disclosed in course of time by other causes, the absence of a punishment for witnesses and others also is inferrable from this very text.

5

Here ends the Chapter on Witnesses.

Viramitrodaya.

Thinking of an exception to the penalty etc. for false evidence, the Author proceeds

Yājñavalkya, Verse 83.

10

Yatra, 'where', *varṇindam*, 'of the *varṇis*' i.e., of the Brāhmaṇa, Kshatriya, and the Vaiśya, *vadhaḥ*, 'capital punishment', i.e., loss of life, results upon stating the truth, *tatra*, 'there', *sākṣhi*, 'a witness', *anṛtam*, 'an untruth' i.e., such as may be of use in preventing the loss of life, *vadet*, 'may speak'.

15

Tatpāvanāya, 'for purification from that' i.e., for the wiping off of the (sin of) false statement by means of a penance, *Sārasvataḥ*, i.e., intended for the goddess Saraswati, as stated before, *nirvāpyah*, 'should be offered', thus by means of a part, the (whole) sacrifice has been indicated.

It should not be contended that here the making of a false statement having been permitted, performance of a penance is incongruous; for although this is an exception to the rule stated before regarding the sin generated by the false statement of a witness, still to the general rule about the sin resulting from a false statement, no exception having been stated, the performance of a penance becomes possible.

20

Some say, that here is a case of a resort to an unavoidable course, by reason of this sin being smaller as compared with the sin consequent upon the execution of a member of the *Varnas*.

25

In¹ fact, in this case no sin is generated; by the expression 'for purification from that' it is meant to indicate that there is an absolute

30

1. Here Mitramiśra gives his own view which in short is that just as killing an animal in a sacrifice is no sin, as it is done under an injunctive text, so here also there is no sin at all. The analogy, however, does not hold here, the expression तत्पावनाय 'for the purification of that' in terms assumes that there is something which requires purification.

absence of the sin generated by non-action in the making of a false statement, just as is the case in the killing in a sacrifice. And hence also in the text: “Where, as the result of a (true) statement, the loss of life is possible of a Śudra, Vais'ya, Kṣhatriya, or a Brāhmaṇa,
 5 there an untruth may be stated; that (*i.e.*, untruth) far excels the truth”, Manu has stated an absence of sin. Gautama² also: “No guilt is incurred by giving evidence, in case the life (of a being) depends upon it; not, however, of a very wicked (individual)”. In this connection, Manu³ has stated another mode of penance: “Or one may offer
 10 oblations of clarified butter in the Fire with the *Kushmāṇḍa* hymns according to the ritualistic procedure, or with the *r̥k* ‘udit’, or with the *r̥k* addressed to *Varuṇa*, the three *r̥ks* addressed to the God of water.” Viṣṇu,⁴ “A Śudra, however should offer fodder for ten cows (which would be sufficient) for a day.”

15 Thus, in the commentary upon Śrimat—Yājñavalkya
ends the Chapter on Witnesses

Sūlapāṇi.

The Author mentions an exception to the speaking of the truth

Yājñavalkya, verse 83.

20 *Varṇinām*, ‘of the varṇis’ *i. e.* of the four *varṇas* such as the Brāhmaṇa and the rest, where *vadha*, ‘killing’ is possible, there a witness may speak an untruth. For the wiping off of the sin thereby generated, a sacrifice to the goddess Saraswati should be offered.

25 Although, it has been stated in the text of Manu⁵, “Never should one kill a Brāhmaṇa” still in the case of a king with a strict enforcement of penalties, killing of a Brāhmaṇa becomes possible. This is to be understood as being done by mistake. So also Gautama⁶: “There is no sin in (stating) an untruth, if the life (of a being) is dependent upon it, but not the life of a very wicked (one).” (83).

30 Here ends the chapter on Witnesses.

1. Ch. VIII. 105.

2. Ch. XIII. 24–25.

3. Ch. VIII. 107.

4. Ch. VIII. 17.

5. Ch. VIII. 381.

6. Ch. XIII. 24, 25.

Chapter VI.

OF DOCUMENTS.

* Page 53.

Possession and witnesses have been explained. Now begins the consideration of documents. 5

Here, a writing is of two sorts, a *S'asana* (a royal grant), and a *Jânapada* (executed between citizens). *S'asana* has been explained¹. (Now) *Jânapada* is being explained. That, moreover, is twofold—one in his own handwriting, and the other in another's hand. Of these, that in one's own handwriting may be without any attestation, while that in another's hand should bear attestation by witnesses. These two are accepted as proofs having regard to the usage of the country, as says Nârada²: “A Document has been said to be of two kinds (1) in the handwriting of the party himself, and (2) in that of another person, and respectively not having or having attesting witnesses thereon. The validity of the two (kinds of documents) depends upon local usage.” 10 15

Of these the Author mentions documents in the handwriting of another person

Yâjñavalkya, Verse 84. 20

In every transaction where an amount has been agreed to by a contract entered into by mutual consent, there should be made a writing about it with (the attestation of) witnesses (thereon), and with the name of the creditor, 25

Mitâksharâ:—Between the creditor and the debtor whatever arthah, amount, e. g. gold &c. parasparam swaruchchyâ, by mutual consent, e. g. “so much should be paid after such and such an interval; so much should be the monthly rate of interest &c.”

1. See Yâjnavalkya Achâradhyâya Verse 318 p. 580, ll. 4-7.

2. Oh. I. 135.

nishnâtah, has been agreed to by a contract, i. e. settled; in reference to such an amount, if in course of time a dispute arose, for the determination of real facts, lekhyam sâkshimat, a writing with (the attestation of) witnesses (thereon) i. e. with the attestation of witnesses of the qualities as described above, dhanikapûrvakam, (commencing) with the name of the creditor—that wherein the creditor is (mentioned) first is a dhânkapurvakam—that is to say, where the name of the creditor is mentioned first-kâryam, should be made, i. e. should be executed. Or persons, possessing the qualifications mentioned above should be made witnesses. Vide the text: "In disputes regarding whatever act has been done by a party, either witnesses, or a document in his own hand is ordained for establishing the transaction."

S'ûlapâni.

Yâjñavalkya, Verse 84.

Yah Kaśchit, 'whatever', in the form of a loan transaction, arthah, has been fixed by mutual consent, 'by such an interval so much is to be paid' and the like, in such a transaction, a document with witnesses i. e. a document bearing witnesses, should be made and that too by first putting the name of the creditor before the name of debtor is written. (84).

Yâjñavalkya, Verse 85.

And containing, among other things, the year, the month, the half of it, the day (of the month), the names, the castes, and the names of their own gotra, as also the scholastic title, and the names of self, father, and such other details.

Mitâksharâ :—Moreover, samâ, the year i. e. the cyclial year; mâsah, month, e.g. Chaitra &c; tadardham, the half of it, i.e. the fortnight i. e. the bright or dark (half); ahaḥ, the day, i. e. the date such as the pratipad &c; nâma, names, i. e. of the creditor and the debtor; jâtiḥ, caste, i.e. Brâhmaṇa &c; swagotram, the names of their own Gotra. e.g. Vâsishtha &c. containing these i. e. the year &c.

1. Of Nârada.

&c. Similarly, *sabrahmachârikam*, the scholastic title, e.g. he is the master¹ of many branches of learning i.e. his academical title, such as 'Katha the master of many branches,' *âtmiya pitrînâma*, the name of self and father; i.e. the name of the fathers of this creditor and the debtor. By the (use of) the term *âdi*, such other, are included the amount, the caste, the quantity of the amount, the day of the week &c. A writing, containing these² should be executed; this is the connection (of this verse) with the last (verse). 5

S'ûlapâni.

Yâjñavalkya, Verse 85. 10

Gotra itself is *sagotra*; *sabrahmachârikam*, 'the scholastic title' such as, a student of such and such *Sâkhâ*, that writing should have noted on it, the year &c. By the use of the word *âdi*, 'and the like', also of the thing, quantity, kind, and the like. (85).

Yâjñavalkya, Verse 86. 15

After the contract has been executed completely the debtor should enter his name with his own hand (at the end) with the words: "what is written above has the assent of me the son of such (and such) a one."

Mitâksharâ :—Moreover, the contract which was agreed to between the creditor and the debtor by mutual consent, *samâpte*, after it had been completely executed, i.e. written down, *rñi*, the debtor, i.e. the person who incurs (the liability of) the loan, nives'ayet, should enter, i.e. write in the document his own name swahastena, with his own hand, i.e. with the words: "Whatever

1. The original in वृत्तः—Doctor of learning.

2. Referring to this rule in a case of a will made by a Hindu, which was not written by the testator, nor in which was his signature attested, Sir M. Westropp C. J. observed: "We do not think that we are bound to apply this rule strictly, at all events to documents such as wills, which were not recognized by Hindu Law, and were therefore, not within the contemplation of the author." *Radhabai v. Ganesh I. L. R. 3 Bom. 7* at p. 8.

has been written above in this document, matam, *has the assent of me, i. e.* is what was intended by *me*, māma, the son of such and such”

S'ūlapāṇi.

5

Yājñavalkya, Verse 86.

The meaning (of this verse) is plain. In the case of one ignorant of writing, Vyāsa states a special rule: “A debtor who is ignorant, should cause his assent to be written; or even a witness (who is ignorant) by a witness, or by any other in the presence of all witnesses.” (86).

10

Yājñavalkya, Verse 87.

The witnesses also, should subscribe in their own hand with their fathers' names before theirs, thus: “Here, so and so, am a witness;” these (witnesses) should be equal.

15

Mitākṣharā :—Similarly, those persons who have been indicated as sākshiṇāḥ, *witnesses*, in that document,

* Page 54. these also should each separately, swahastēna, *in their own hand*, subscribe their names preceded

by those of their fathers with the words: “I so and so, Devadatta, am a witness to this transaction.” These, moreover, should be (so)

20

selected (as to be) samāḥ, *equal*, in number and quality also.

If a debtor or a witness is not literate, then the debtor through another person, and the witness also through another witness, should in the presence of all the witnesses, cause his declaration to be written down. As says Nārada: “A debtor who is illiterate should cause his declaration to be put in writing in the presence of all the witnesses, so also should a witness (who is illiterate have it written) by another witness”.

S'ūlapāṇi.

Yājñavalkya, Verse 87.

30

Samāḥ, ‘equal’ *i. e.* equal in qualifications. Those who, however, are ignorant of writing should have it written—thus it has been stated before. (87).

Yājñavalkya, Verse 88.

"Being desired by both the parties this was written by me so and so, the son of so and so.", thus at the end (of the document) should the writer then subscribe.

Mitâks'harâ:—Moreover, then lekhako, the writer, ubhâbhyâm prârhitena, being requested by both, i.e. the creditor and the debtor—"By me such and such Devdatta, the son of Vishnumitra this document likhitam, has been written", iti ante likhet, thus at the end he should subscribe.

5

10

15

20

25

30

Now the Author mentions about a document made in one's own hand

Yājñavalkya, Verse 89.

Although it be without witnesses, a writing which is in one's own hand, all that is declared to be evidence, except when it is caused by force or fraud.

Mitâks'harâ :—Yallekkhyam, that writing, which has been written by the debtor in his own hand, such a writing, tat sâkshibhirvinâpi, although it be without witnesses, has been laid down by Manu and others to be evidence, balopadhikrtâdrte, except when it is caused by force or fraud, i. e. with the exception of that which has been caused by force i. e. compulsion, or by fraud i. e. in the form of (creating) deception, temptation, anger, fear, intoxication &c. Nârada¹ also says: "That document has been laid down as invalid² which has been executed by a person intoxicated, by one against whom a charge had been pending, by a woman, or by a child, and that which had been executed under compulsion; also that which has been caused by fear or fraud".

Such a document, moreover, whether it be written in one's own hand or in that of another, whether it be passed in the course of a transaction with or without security, should thus far be written conformably to the usage of the country, and should be without

1. Ch. I. 137.

2. अप्रमाण—unreliable as evidence.

prejudice to the rules as to the sequence of sense and the order of words, and should be without dropping any letter or alphabet. It need not, however, be necessarily (couched) in nice language ; it may be written even in the peculiar native language of the particular locality.

5 As says Nârada:¹ "That document is said to be valid which is not opposed to the custom of the country, the contents of which answer to the rules regarding pledges, and which is not in disregard of the rules about the sequence of ideas and words."

That which explains in detail is a (rule) *vidhi*. The rule (*vidhi*) regarding a pledge (*âdhi*) i. e. for executing a pledge. Its characteristic i. e. 'a pledge for custody', a 'usufructuary pledge', a 'pledge with a time limit' &c. That wherein its characteristics are distinct is *vyaktiâdhividhilakshanam* 'the contents of which answer to the rules regarding pledges &c.; *Aviplutakramâksharam*, 'which is not in disregard of the rules about the sequence of ideas and words'. Sequence i. e. of ideas (*krama*). *Krama* and *aksharas* make up the compound word *kramâkshara*. That wherein the sequence of ideas and words has not been disregarded is *aviplutakramâkshara*. Such a document of this description, is legal evidence. There is no rule as regards nicety of language here, as in the case of a royal grant. This is the meaning.

Viramitrodaya.

Now the Author expounds the document as a means of proof

Yâjñavalkya, Verses 84, 85, 86, 87, 88, 89.

25 A document is of two kinds, (one) made in one's own handwriting, and (the other) made in another's hand. Of these, the last should be made with witnesses etc. The first, (even) without witnesses is good evidence if not made under compulsion or through fraud. This is the difference. But a possibility exists of a suspicion arising about a 30 document written in one's own hand, and with a view to dispel it, that also should be made with witnesses on. Other kinds are of the ordinary particulars.

Yah haschit, 'whatever', *arthah*, 'transaction', in the form of a loan or the like, *parasparam*, 'mutually', by the debtor and the

1. Ch. I. 136.

creditor, i.e. between both, by the consent of each, *nishṇātah*, 'agreed to', i.e. was established, in such a transaction, *lekhya*, 'a document', with the name of the creditor first written, in the form of recitals couched in expressive language (84). Together with *samā*, 'the year', *māsa*, 'the month', *tadardham*, 'its half', i.e. the fortnight¹; *ahāh*, 'the day', i.e. the date as well as the day of the week. Together with this, the names of the debtors and the like others who have been the recipients of the loan by its acceptance, also of both the debtor and the creditor, *jātiḥ*, 'caste' such as, a Brāhmaṇa and the like; *sagotram*, 'together with the gotra', i.e. *gotra* only—at some place the reading is 10 *swagotraka*—containing these. 5

Along with *Kaṭha* and the like others, *samānam* one who studies the *Brahma*, i.e. a branch of the Vedas, is a *sabrahmachāri*, 'of the same school'; such a portion. *Sabrahmachārikam*, 'the scholastic title' of the debtor and the creditor, the fact of their pursuing the study of *Kaṭha* or a like other branch (of the Vedas), *ātmiyam*, 'of one's' i.e. of the creditor and the debtor, *pitarau*, 'the parents' their names. By the use of the word *ādi*, &c. are included the amount, its kind, and quantity, and the like ; marked with these, should be made. 15

By the use² of the word *tu*, 'however', are excluded those made under compulsion or by fraud; by the second use is excluded one without a document when the document is written by another. This, moreover, should be borne in mind, that even if written by another, a document if admitted to be an extremely honest transaction is good evidence even if it be without a witness ; otherwise, however, the decision is to be reached 25 by means of witnesses. There, the document is used as a means of reminder to the witnesses. 20

Artha, 'the contract', when (it is) completely written down ; *ṛṇi*, 'the debtor', *yadatra patre lekhitam*, 'whatever has been written in this document', that, *matam me amukaputrasya*, 'has the assent of me the son of so and so.' Thus, after having written this in order, he should write his own name with his own hand, and enter it in the document. 30

In the case of one ignorant of writing, Vyāsa states a special rule : "A debtor who is ignorant, should cause his assent to be written ; or even a witness (who is ignorant), by a witness, or by any other, in the presence of another and the witness." (86). 35

'With witnesses', so has been stated. There, the Author mentions the mode—*sākṣināscheti*, 'witnesses, &c.', *samāh*, 'equal', i.e.

1. ग्रः—either the bright or the dark half of a month, शुक्ल or कृष्ण.

2. i.e. in verse 84.

with equal qualifications, *te*, 'these', i.e. the witnesses, *swapitṛndamalekhanapūrvakam*, 'with their father's names written before', *atra*, 'in this transaction', *aham amukah*, 'I, so and so' by name, *sakṣhi*, 'am a witness', thus *swahastena*, 'in their own hands', *likheyuh*, 'should 5 (they) write'. Those who are ignorant of writing should cause it to be written; this is indicated as an addition by the word *cha*. (87).

Tataḥ, 'thereafter', i.e. after the name of the witness was written, *lekhakah*, 'the writer', i.e. the writer of the document, *ubhābhyaṁ*, 'by both' i.e. by the creditor and by the debtor, *arthitena*, 10 'being requested', by name so and so, by myself this, *likhitam*, has been written, thus *ante*, 'at the end', i.e. rounding up the remaining portion of the document to be written, himself *likhet*, 'should write'.

By the use, twice, of the word *hi*, the object of recording the request, and also the understanding of the import of the document, has 15 been pointed out. (88).

Vināpiti, 'even without, &c.', has been explained before. By the use of the word *tu*, is excluded a document written by another and executed with attestation. *Sarvam*, 'all that', by this is expressed all the writings, viz., of the plaintiff, witnesses, the writers of the 20 documents, etc. (84-89).

S'ūlapāṇi.

Yājñavalkya, Verses 88, 89.

The meaning (of Verse 88) is plain.

A document written by the hand of the debtor, even though it be 25 without attestation, still it is good evidence, provided it does not happen to have been caused to be made under compulsion or by fraud. *Upādhīḥ*, 'fraud' i.e. deceit. So Brhaspati¹: "A document executed by a dying person, an enemy, one oppressed with fear, a woman, a suffering person, one intoxicated, distressed by a calamity, at night, by fraud, or by force, 30 does not hold good". (89).

While discussing the rules about documents the Author mentions the rule that a debt entered into a document should be paid by three (generations in descent) only.

1. Ch. VIII. 23.

Yâjñavalkya, Verse 90 (1).

A debt evidenced by writing should be paid however by (persons in) three (generations) only.

Mitâksharâ :—As a debt evidenced by a witness should be given by three (generations) only, so also it is ordained that a debt evidenced by a document should be paid by the borrower, his son, and the sons of that son i. e. by three (generations) only, and not by the fourth and others. 5

An objection :—Indeed by the text¹ “sons and grandsons should pay a debt”, it has already been established as a general restrictive rule that a debt should be paid by three only. 10

The answer :—True. But this text has been mentioned with a view to meet a suggestion which may likely be made that a debt entered in a document might be understood as an exception to this general rule on the strength of its having been found in another Smṛti. For, after mentioning the characteristics of a document it has been said by kâtyâyana : “Thus, an ancestral debt is made payable after the (proper) time has passed”. Thus an ancestral debt which is entered into a document is made payable even though the time (for payment) has passed. Here by the use of the plural in *pitrñām*, ‘of the ancestors’ as also from the expression ‘time has passed’, it is inferrable that the fourth 15

* PAGE 55. (descendant) and others may be made to pay².

Moreover, Hârîta also has said: “To him in whose possession the document purports to be, should payment be directed to be made.” Here also by the general rule that ‘the debt is his who has the document in his custody’, the inference arises that the payment of debts may be made to the fourth (descendant) and others. Therefore it is proper that the present text is for the purpose of removing the doubt. The two texts, moreover, should be supplied 20 in pursuance of the text of the *Lord of the Yogis*³. 25

1. Verse 50 See p. 792.

2. See *Masit Ullah vs Damodar Prasad* 53 I. A, 204; 48 All 518 Also *Sheo Ram vs. Durga* 3 Luck, 700. Where the Privy Council held that a son was bound by the sale of ancestral property by the father for paying off a debt of his grandfather i. e. the grandfather of the son.

3. i. e. The sage Yâjñavalkya.

The Author mentions an exception to it

Yâjñavalkya, Verse 90 (2).

A pledge, however, is enjoyed as long as it is not paid off.

5 **Mitâksharâ** :—The non-liability for paying a debt having become established by the (general) rule in the text: “A debt is payable by three only, although it is reduced to writing and is with a security,” an incapacity for recovering a debt might also be inferred. With a view to (avoid) this, the Author has stated this (text).

10 By saying that ‘a pledge may be enjoyed even as long as the debt is not paid off, whether by the fourth or the fifth’ a capacity has been indicated in favour of even the fourth (person in descent) for redeeming a secured debt.

15 An objection!—But this too has been once stated already in the text¹: “a usufructuary pledge never lapses”.

The answer—True, still if this text which is in the nature of an exception, were not given, it (*i.e.*) the capacity would be confined to three persons only. Thus everything is without a fault.

Viramitrodaya

20 A document, sometimes is not regarded as conclusive evidence. The Author states that

Yâjñavalkya, Verse 90.

25 A loan which has been entered in a document, *tribhireva*, by (descendents to) three (generations) only, *deyam*, ‘should be paid’. By the use of the word *eva*, ‘only’, are excluded the great-grandson and others. Therefore the meaning is that even if there be a document, a loan cannot be enforced against a great-grandson and others. By the use of the word *tu*, ‘however’, is excluded the liability of the grandson to discharge a surety liability included and joined to the word *rñam*, ‘debt.’

30 *Adhîh*, ‘a pledge’, a possessory pledge such as land, &c., *tâvat bhujyate*, ‘is as long enjoyed’, *yâwat*, ‘so long’, *tad*, ‘that’, pledge, *i.e.* that debt is not paid back by the debtor to the creditor. The meaning is that in that way, therefore a document of pledge evidences a good claim even beyond three generations. (90).

1. Verse 58 at p. 820. l. 18.

S'ūlapāni.

Yājñavalkya, Verse 90.

A loan as described before entered in a document, excepting a pledge, should be paid by (members of) three generations ; not, however, by the fourth. In regard to the rule laid down in the text¹: "by the son and the grandsons the debt must be paid", this text is intended for limiting it. Where a debt has been advanced after taking a pledge, there this rule does not apply ; so Manu²: "In regard to (amorous) women, at marriages, for the cow's fodder, as also for fuel, and (in anything) in favour of a Brāhmaṇa, for a (false) swearing there is no sin". (90). 5
10

Having disposed of a matter which had occasionally arisen, the Author resumes the subject in the context proper.

Yājñavalkya, Verse 91.

If a document is in another country, is badly written, or is lost, as also, if it is stolen ; likewise if it is torn, burnt, or cut asunder, another should be allowed (by the king) to be made (in its place).

Mitākṣharā:—The rule which is now being laid down is that when a document has become unfit for a suit, another should be made. And unfitness for a suit arises, when the document is des'āntara-shtē, placed in another country, which is at a long distance ; durlekhye, when the document is *badly written*, that is—wherein the writing i. e. the character or words are bad i.e. ambiguous or unintelligible, is (called) a badly written document; in such a badly written document. Nashtē, *lost*, i. e. in course of time ; unmṛṣhtē, *effaced*, i. e. where the characters and letters have been rubbed off on account of the weakness of the ink.; hr̥te, *stolen*, i.e. by robbers &c.; bhinne, *torn*, i. e. tattered ; dagdhe, *burnt*, i. e. has taken fire; chhinne, *cut asunder*, i. e. when it is cut into two separate pieces. 20
25
30

This (rule applies), moreover, when there is mutual consent of the plaintiff and the defendant. In the case of a difference, however,

1. Verse 50 p. 792.

2. Ch. VIII. 113. It does not appear why this verse is cited here.

and when parties go to law, time should be allowed (as may be necessary, for producing the document which is in another country, having regard to the inaccessibility and badness of roads.

5 In the case of a document which is lying in a place which is inaccessible, or which is lost, a suit should be decided by means of witnesses only. As says Nârada¹: "When a document has been transferred into another country, or burnt, or badly written, or stolen, time should be allowed in case it should exist still; if it be not in existence, the evidence of those who have seen it decides the matter".

10 10 In the case of a document which exists i. e. is still in existence, for producing it from another country time should be allowed i. e. an interval of time should be granted.

15 In the case, however, of that which does not exist i. e. has ceased to be in existence, the suit should be decided by examining those witnesses who have seen it before. When, however, there are no witnesses, then the decision should be made by (a resort to) an ordeal, *vide* the text:² "In a suit where a document or witnesses are unavailable, the divine proof should be exhibited". This refers to a document between (private) citizens.

20 20 Similar is (the case with) a Royal grant. This, however, is the difference: "³ A document is known as a Royal grant which bears on it the King's own handwriting, and which is marked with his own signet seals; it is (valid as) evidence in all transactions." Similarly another (kind of) royal deed⁴ evidencing success has been mentioned by Vrddhavasishtha: "That is called a *jayapatraka* (a document evidencing success) in which is indicated the manner how the point at issue was proved, which contains the answer as well as the proof, and which has also the decision (recorded) in it. To the litigant who wins and who has established his point, the *jayapatraka* should be delivered over impressed with the Royal seal and having the signature

1. Ch. I. 146.

2. Of Kâtyâyana, Verse 224.

3. See Kâtyâyana, Verse, 258.

4. A जयपत्रक a decretal document, *decreta*, a decree and judgment. *Jayapatraka* is a "certificate of success" supplied to the successful litigant as evidence of his success in the particular suit. A *Hinapatra*—"a certificate of defeat" is only evidence that a particular person was defeated in a particular plea or pleas in a certain litigation.

thereon of the Chief Judge in his hand." Similarly the councillors also should add in their own handwriting thus: "This is approved by me the son of so and so &c." *vide* the text of Manu: "And also the councillors such as are versed in the *Smṛtis* and the *Sāstra*, should add (in) their own hand just as in the (case of) 5

* PAGE 56. procedure (prescribed) for documents". Moreover, a proceeding is not declared to be free from defect except with the unanimous consent of the councillors, as says Nārada¹: "That (decision of a) dispute is considered to be without a dart where all the members of the judicial assembly declare, 'This is right', otherwise the dart remains in it." 10

Moreover, this rule applies only in the case of a judicial proceeding which contains (all) the four components; *vide* the text²: "That is declared to be a *Jayapatraka* which proves the matter in issue, which contains (all) the four components, and which also bears on it the Royal seal." Where, however, there is a defeat, as in the text³ "One who alters his former statement, one who shuns a trial at law, one who does not put in an appearance, one who makes no reply, as also one who absconds after being summoned—these are the five varieties of a faulty (*Hīna*) litigant."—in such a case no *Jayapatraka* is given, but only a *Hīnapatraka*—a certificate of a defeat. This (last) moreover is given with the object of imposing a penalty in course of time, while a *Jayapatraka* is (given) with the object of establishing the plea of *res judicata*. This is the distinction. 20

Viramitrodaya

When a document, executed at the time of the transaction of the loan, by reason of its location in another country or a like cause, is not likely to be available for being proceeded upon at the time of the action, another document should be made. That, moreover, when agreed to by both is good evidence; so the Author says 30

Yājñavalkya, Verse 91.

When a document is *dēśantarasthe*, 'located in another country', i.e. lying in a place other than the one in point; *dushtē*, 'is faulty', i.e.

1. Oh. III. 117.

2. Of Kātyāyana.

3. Nārada II. 33. The meaning is that here the plaintiff was put out of the court on account of a defeat in his side; and not that the defendant got success after a contest.

the letters in which are ambiguous ; *nashṭe*, 'is lost', by the paper being destroyed ; *unmṛṣṭe*, 'effaced' owing to the weakness of the ink, the letters in which are rubbed off ; *bhinne*, 'torn', i.e. on account of the papers being separated, cut into two ; *dagdhe*, 'burnt', by fire; or 5 *chhinne*, 'cut asunder', i.e. being cut into tatters, being split into two ; *annyallekhyam*, 'another document', *kārayet*, 'should be caused to be made'.

By the use of the word *tathā*, 'likewise', is included the compound word formed ; and by *cha* is included the one taken away by a thief.

10 By the use of the word *eva*, 'also', the making of another document is excluded in the absence¹ of its being located in another country, &c. If the other side, with a sinful desire for appropriation, does not accept the former document, then after having established (the fact of) the former document by means of witnesses and the like means, another document 15 should be made. (91).

S'ūlapāṇi.

Yâjñavalkya, Verse 91.

Unmṛṣṭe, 'effaced', brought about by a defect in the ink; by the use of the word *bhinne*, 'torn', i.e. cut, *chhinne*, 'tattered', i.e. shattered, 20 another document with the consent of both may be caused to be made. (91).

The Author mentions the ways of deciding a case when a doubt or dispute about document arises

Yâjñavalkya, Verse 92.

25 The genuineness of a doubtful and disputed document may be established by (comparison with other) documents and (other writings) of the party (written) in his own hand, and by similar other means ; as also by presumption, by confrontation of parties, by direct proof, by marks, by previous connection, by (a probability of) title and by 30 inference.

Mitâksharâ.—*Lekhyasya*, of a document, *sandigdhasya*, 35 which has been doubted as to whether it is genuine, *s'uddhiḥ*, the

1. i. e. the several circumstances mentioned in the text such as its being in another country, or lost &c.

genuineness, *Syāt*, becomes established, *swahastalikhitādibhiḥ*, by comparison with other documents and similar (other writings) of the party, i. e. by (establishing) the genuineness by (means of) another document which was written by him in his own hand. The meaning is that if the letters are similar, the genuineness would be established. 5

By (the use of) the expression, *ādi*, such other, it is implied that the genuineness is established by (pointing out) a similarity with other writings of the witnesses, or the writer, written in their own hands (with the one in dispute). A conclusion arrived at by regard to probability is a *presumption*, *yuktiprāptih*; *Prāptih*—is the (presumption arising from the) connection with the thing in dispute, with the country, period, and persons. A *yukti*—is a probative reasoning as e. g. in ‘It is probable that this (particular) thing may belong to this (particular) individual’, *kriyā*, *direct proof*; i. e. the adducing of witness evidence on the point; *chinham*, *marks*, i. e. distinctive marks such as a *S'ri* (श्री) &c.; *sambanhdhah*, *previous connection*, i. e. the mutual relations of advance and acceptance (of loans), even before, between the plaintiff and defendant on account of mutual confidence; *āgamah*, *title*, e. g.—“he has established a reliable origin of title to the subject-matter in dispute by so much.”—These only are the circumstances. By means of these circumstances the genuineness of a disputed writing may be established. This is the context¹. 15

When, however, a decision cannot be arrived at in the case of a disputed document, then the decision should be made by the help of witnesses, as says Kātyāyana²: “When (the genuineness of) a document is disputed the plaintiff should cite those (as witnesses) who appear therein.” 20

This text applies to a case where it is possible to have witnesses. In the case, however, where it is not possible to have witnesses, the text of Hārīta applies, viz.—“Where a party says—‘I did not execute this document, he (i. e. the other party) has forged it’—then keeping aside that document, the decision should be made by means of an ordeal.” 25

1. अन्वय—the order or connection of words in a sentence.

2. Verse, 283.

Viramitrodaya

The Author mentions the means of removing the doubt about the unreliability of a document.

Yājñavalkya, Verse 92.

5 Of a document regarding which a doubt has been raised as to whether it is genuine or not genuine, *suddhiḥ*, 'genuineness', i.e. the certainty of its goodness is determined by noting a good resemblance between it and another writing which is (admittedly) written by the opponent with his own hand. By the use of the word *ādi*, 'and the like',
 10 it is indicated that with the handwriting of the writer of the document in which the witnesses have subscribed, on a comparison with another document, the appearance of a good resemblance with the writing of the document would establish the genuineness.

Yukti, 'presumption', i.e. a contrary inference from the statement i.e. 'At present there is no money, it will be paid by me in another month', and the like. Prāpti, 'receipt', i.e. the receipt of interest stipulated in the document of loan; kriyā, 'proof', in the form of statement of witnesses; chinham, 'mark', a special mark particularly characteristic of the writing by the opponent, e.g. śri, etc.; sambandhah,
 20 'connection', such as in regard to the subject-matter of the dispute such as an ear-ring, &c., a finding about the relationship of a creditor, &c., agamah, 'title', i.e. of the subject-matter of the suit, such as a purchase, &c., before that; by these causes also the genuineness may be established. (92).

25

S'ūlapāṇi.

Yājñavalkaya, Verse 92.

Yuktiprāptih, 'presumption by confrontation', in this form:—"In this time, at such a place, it appears probable for this man to have his property, and in the like"; Kriyā, 'direct proof', i.e. the evidence of the witnesses; chinham, 'marks' i.e. special signs; sambandhah, 'connection', i.e. of the person offering and the one accepting; also by former writings &c. in his own hand a connection with the acceptance, a document about which a doubt has been raised, one may be examined.

By the use of the word *ādi* are included the hands of the witness, 35 of the writer, and of himself. So says Kātyāyana¹: "When there is doubt about the hand-writing of the debtor, whether he be living or dead, (by a comparison) with other documents written in his own hand, the decision about the documents (in question) should be reached". (92).

1. Verse 286.

Thus when after the document is established as genuine, as also the liability to pay the debt (a question might arise as to), what should be done if a party is unable to pay the entire debt? So the Author says

Yājñavalkya, Verse 93.

5

The debtor should write on the back of the bond each payment made by him after making such payment; or the creditor should endorse the amount received by him marked in his own hand.

Mitâksharâ:—When the debtor is unable to pay the entire debt, then he should pay according to his means,

10

An endorsement on the deed. and write the same on the back of the bond thus: “So much was paid by me;”—or the creditor should endorse *i. e.* write on the back of the

document itself whatever amount was *upagatam, received, i. e. got by him,* thus,—“So much was received by me.” How?—*swahastaparichinhitam, marked in his own hand, i. e. marked by letters written in his own hand.* Or, (it may mean this) *viz.* that the creditor should give to the debtor a note of acknowledgement of receipt marked by letters written in his own hand.

15

S'ûlapâñi.

20

Yājñavalkya, Verse 93.

When the debtor is unable to discharge the entire debt, as much amount as he pays, so much the debtor should cause to be endorsed on the back of the debt-bond. The creditor also should give a writing for the endorsement. As says Vishnu¹: “When the whole amount in entirety has not been paid, the creditor should pass a writing in his own hand”. (93).

25

What should be done with the document when the entire debt has been paid off? so the Author says

Yājñavalkya, Verse 94. (1)

30

After paying the debt, the document should be caused to be torn, or another should be caused to be made for (evidencing) the acquittance.

1. Ch. VI. 26.

Mitâksharâ :—Either by instalments or at once, in its entirety datwâ, having paid, rñam a debt, lekhyam, the document, executed before, should be caused to be torn.

When, however, the document happens to be in an inaccessible place or is lost, then the debtor kârayet,

5 * Page 57. should cause, the creditor to pass to him another document sudhyai, as evidencing the acquittance.

i. e. discharging him from his obligations as debtor. The meaning is that the Creditor should pass a deed of discharge to the debtor in the order mentioned before.

10 What should be done when a debt incurred in the presence of witnesses is to be discharged entirely? so the Author says

Yâjñavalkya, Verse 94 (2)

And a debt which was incurred before the witnesses should be paid off in the presence of witnesses.

15 **Mitâksharâ** :—That debt, however, which was incurred before witnessess should be paid off only in the presence of those who had previously witnessed it.

Here ends the Chapter on Documents.

Viramitrodaya.

20 Just like the document of the loan, the document evidencing its discharge is also a good evidence; so intending, the Author says

Yâjñavalkya, Verses 93, 94.

25 *Lekhyasya*, ‘of the document’, i.e. of the paper, *prshthe* ‘on the reverse’ side, as he goes on paying the amount in small instalments, so after each payment, *rñiko abhilikhet*, ‘the debtor should write.’ After having paid the entire loan, however, the document of loan given by himself, *pâtayet*, ‘should cause to be torn’, i.e. should be cut into pieces.

30 When, however, the debt-bond is not at hand, *sudhyai*, ‘for the acquittance’, i.e. as evidencing the certainty about the cessation of his liability as a debtor, *annyallekhyam*, ‘another document’, reciting the fact of the discharge, *kârayet*, ‘should be caused to be made’.

This is to be particularly noted: A debt which has been taken in the presence of witnesses, that should be paid off in the same manner. By the use of the word *cha*, it is indicated that in the absence of one's own handwriting, the mark of the handwriting of an honest man is to be admitted. By the use of the word *tu*, 'however', in a debt incurred without witnesses, the discharge in the presence of witnesses is excluded. By the use of the word *cha* is included a payment without witnesses of a loan incurred without witnesses. (93, 94). 5

Thus in the Commentary on S'rîmat Yâjñavalkya,
ends the Chapter on Documents.

10

S'ûlapâni.

Yâjñavalkya, Verse 94.

When the whole amount in entirety has been paid off, the debt bond should be torn. If, however, the document is not available, by way of evidencing the acquittance, another document should be caused to be made. When a loan has been taken in the presence of a witness, it must also be paid in the presence of a witness. (94). 15

Here ends the chapter on Documents.

Chapter VII.

OF THE ORDEALS.

20

Human evidence has been said to be three-fold viz. consisting of documents, witnesses, and possession.

It is now the turn of ordeals; and the Author wishing to expound ordeals as a means of evidence lays down the procedure in ordeals by the first five *slokas* commencing with "The balance, the fire &c." (Verse 95). There, presently, the Author mentions the ordeals

25

Yâjñavalkya, Verse 95 (1).

The balance, the fire, the water, the poison and the *kos'a*, are the ordeals, (prescribed) here for exhortation (from an accusation).

30

Mitâksharâ:—The five ordeals *i. e.* those beginning with the balance and ending with the *kos'a* should iha, here, *i. e.* in the *Dharma-S'âstra*, be offered for *visuddhaye*, *exhoneration*, *i. e.* for removing an ambiguity about a doubtful point. [95 (1)].

5 Elsewhere have been mentioned other ordeals, even such as *the rice* and like others, *vide* the text of *Pitâmaha* : “ The balance, the fire, as also the water, the poison, and similarly the *kos'a*, likewise the rice ; these are the ordeals ; and the seventh is the heated *Mâsha*. ” Then why say these only ? So the Author says

10 **Yâjñavalkya, Verse 95 (3rd quarter).**

These are (to be resorted to) in trials on serious accusations.

15 **Mitâksharâ :**—*Etâni mahâbhîyogeshveva, these in trials for serious offences only.* This restrictive rule¹ which is here laid down means that these are to be resorted to only in cases of serious accusations, and not that these are the only ordeals. The Author will mention further on the test of seriousness.

20 **An Objection**—‘Indeed, the *kos'a* also is prescribed even in ordinary suits’—*Vide* the text²—“ The (ordeal of) *kos'a* should be caused to be offered even in small (charges). ”

25 **The Answer**—True. The mention of (the ordeal of) *kos'a* among (those of) the balance and others is not indicative of its being limited to serious charges only, but it implies its extention even to *Sâvashâmbha*¹ complaints, otherwise it would be extended even to complaints on suspicion. *Vide* the text³: “ In the case of those against whom a complaint has been made together with a wager, (the ordeals of) balance and the like should be ordered ; while (the

1. Of *Pitâmaha*.

2. A complaint wherein the complainant undertakes to pay a penalty in the case of his failure in establishing his allegations is called a *Sâvashâmbha* Complaint—an *Aavshâmbha* is explained as—स्वोपरि दण्डागीकारोऽवष्टमः ।

3. Of *Pitâmaha*.

ordeals of) the rice and the *kos'a* (should be) in complaints of suspicion only. There is no doubt about this."

It may thus be thought that this rule may be applied invariably in the case of serious complaints, complaints on suspicion, and complaints with a wager, so the Author mentions an exception 5

Yâjñavalkya, Verse 95. (last quarter.)

When a plaintiff¹ has (agreed) to abide by the result (of the ordeal).

Mitâksharâ :—These *i. e.* the (ordeals of) balance and others become applicable to the plaintiff *abhiyoktari s'irshakasthe*, when the plaintiff has (agreed) to abide by the result (of the ordeal). 10

S'irshaka—is the head *i. e.* the fourth part of a suit indicative of the success or defeat—and by this is indicated the punishment.—He who agrees to abide by it is a *S'irs'hakastha*. *i. e.* amenable to the punishment laid down in it (*i. e.* the decision). 15

Viramitrodaya.

It has been stated² before : ‘In the absence of any of these, the ordeal is said to be another’. There, the Author expounds the ordeals by an entire chapter 20

Yâjñavalkya, Verse 95.

*Bṛhaspati*³ : “The (ordeal by) balance, fire, water also; poison, and *kośa* the sacred water the fifth; (of) rice has been declared as the sixth; and the seventh the heated *mâsha* coin; eighth has been stated to be the ploughshare; and *Dharma*, the ninth. All these ordeals 25 have been pointed out by the Self-born”.

Of the nine ordeals thus enumerated, these five ordeals, *i. e.* the balance, &c., in serious charges only, such as gold-stealing and the like for the *sirshakastha*, ‘one who has agreed to abide by the decision’,

1. अभियोक्ता—Lit. person making complaint.

2. *i. e.* the restriction is as to their *application*, and not as to the *kinds*.

3. Ch. X. 4–5.

i.e. the complainant for viśuddhaye, 'for his exhortation', for the removal of suspicion (against him) iha, 'here', i.e. in the Dharma Śāstra have been prescribed. S'irshaka means the offer to bear the penalty upon the success of the matter of the ordeal.

5 If it be argued that having regard to the text : 'the kośa, may be administered even in petty cases', even in charges of a small character, there is kośa; the answer is, true, it is so. But, under the text: "For those against whom an accusation has been brought (accompanied) with a wager, one should direct the (ordeal of) balance and the like; the rice 10 also and also the kośa in cases of suspicion, no doubt", in accusation accompanied with a wager the kośa not being mentioned, this mention of the kośa 'for a plaintiff who has agreed to abide by the result' is by way of an exception. As for : "In cases where the plaintiff has not offered to abide by the result, the four ordeals viz., of the balance and 15 others should be avoided ; kośa has been stated to be where the plaintiff has not (so) agreed". In this text of Pitāmaha, kośa has been stated to be where there is no agreement by the plaintiff to abide by the result ; that has a reference to an accusation based on suspicion. (95).

S'ūlapāṇi

20 In the absence of a document, or in the absence of a possibility of a decision about a document, is the ordeal. That the Author states

Yājñavalkya, Verse 95.

The balance and those other ordeals Mahâbhîyogeshu, 'in charges for serious offences', such as gold-stealing &c.. Abhiyuktari S'irshakasthe, 25 'when the complainant has to abide by the result', iha, in this Śāstra, have been stated. S'irshaka, is the head. That, moreover, here in the case of the success of the opponent, has been agreed to by oneself.

In minor charges, however. as stated in other Smṛtis the rice should be given. The oaths, moreover, should be caused to be taken in the form of 30 the touching of the son's head or similar other acts. These Brhaspati mentions: "The balance, fire, water, poison, and fifthly the Kośa ; the rice has been declared as the sixth; the seventh, a heated Mâsha, is declared. The ploughshare, the eighth, and the ordeal by Dharma as the ninth". (95).

35 By the text¹ " Next the plaintiff should immediately have written down the evidence by means of which the matter in dispute

1. Verse 7 See p. 660.

(or alleged) is (proposed) to be established ", the rule of evidence for an affirmative allegation only has been laid down. The Author says by way of an exception to it.

Yâjñavalkya, Verse 96 (1).

* PAGE 58.

5

Or, by consent, any one may perform (the ordeal), and the other may submit to the judgment¹.

Mitâksharâ:—Ruchyâ, *by consent*, i. e. by the mutual consent of the complainant and the defendant ; anyatarah, *any one*, i. e. either the complainant or the defendant, kuryât, *may perform*, the ordeal, itarah, *the other*, i. e. the defendant or the complainant (as the case may be), wartayet, *should submit to*, i. e. take upon himself the sirah, *judgment*, i. e. to the corporeal or pecuniary punishment (specified therein).

The meaning is this : Ordeal evidence cannot be confined to the affirmative proof alone, as is the case with human evidence, but it is established both by affirmative and negative proof. And hence in the plea of denial, or of confession and avoidance, or of res judicata, an ordeal is permissible according to the option either of the plaintiff or of the defendant.

15

20

Viramitrodaya.

It has been stated² that, "when there are witnesses for both sides, those for him who claims priority should be taken first." There the word 'witness' is merely indicative of evidence ; an ordeal is intended for a particular (kind of) plaintiff, 'Never should any one order a complaint for an ordeal again' in this text has been stated by Manu also. The Author states an exception to it

Yâjñavalkya, Verse 96 (1).

Of the plaintiff and the defendant, of both, whosoever may have a desire for an ordeal ; thus where there is their desire for a performance (of an ordeal) or for its non-performance there the rule 'when

25

30

1. शिरः—Lit. means the head, the top. i. e. last or fourth part of a trial. i. e. that part which declares the success or defeat of parties and the punishment consequent upon it.

2. Verse 17 above p. 696.

there are witnesses for truth, &c.' should be read and is applicable as explanation. 96 (1).

It has been said above that the ordeal of *kos'a* is permissible in petty complaints, in a serious charge, as also in a charge founded on suspicion, or accompanied by a wager. While a restrictive rule has been laid down that the ordeals beginning with the balance and ending with (that of) the poison shall be (resorted to) only in serious charges and in complaints accompanied by a wager. There, the Author mentions an exception to the expression—"Only in complaints with a wager"

Yâjñavalkya, Verse 96, (2).

In the case, however, of high treason, and also of sin (of an aggravated type), a party should (be allowed to) perform an ordeal even though the other party do not submit to the judgment.

Mitâksharâ :—Râjadroha, in charges of *high treason*, or of pâtaka, sins, such as the *Brâhmicide* and like others, one, kuryat, should perform, the ordeal of the balance etc. even if there be none who has offered to submit to the judgment ; and also in charges of robbery, as has been said¹ : "An ordeal should be allowed to those, who have fallen under suspicion of kings, as also those who have been pointed² out along with robbers, and who are anxious to get themselves exonerated." The (ordeal of) rice, moreover, should be given in charges of petty thefts only, *vide* the text of Pitâmaha : "In the case of theft, however, the (ordeal of) rice should be offered, and in none other; this is certain." The (ordeal of the) heated mâsha, however, (should be observed) only in a charge of robbery, *vide* the text³ : "The heated mâsha is ordained in a charge of robbery". Other oaths,

1. By Nârada and Pitâmaha.

2. निर्दिष्टानां च दस्युमिः—This is a very ambiguous expression. It may be interpreted in many ways. One way of interpreting it is as translated above—"pointed out along with or marked as robbers"—दस्युत्वेन निर्दिष्टानामित्यर्थः. Other ways are—"enumerated or cited or referred to along with or by robbers". The one selected in the text would appear to be preferable.

3. Of Pitâmaha.

moreover, refer to petty disputes over small amounts. *Vide* the text of Nârada¹: “(Let him be sworn by) the² truth, vehicle, and by his weapons, as also by his cows, grain, and gold; venerable deities or revered ancestors, by their pious gifts or meritorious deeds. He should (be made to) touch the head of his sons or wives, or even of his relatives. Or in all charges the drinking of the *kos'a* water also—These are the (kinds of) oaths prescribed by Manu in petty cases.”

5

Although oaths also are regarded as an ordeal by reason of the fact that an ordeal is generally understood by the people to be that which decides a point which cannot be determined upon by (means of) human evidence, still a distinction is indicated between these and the ordeals of the balance and others in that, (while) the one is resorted to by reason of the fact that while in the case of one³ a final decision is obtainable immediately without any interval of time, in case of the other a decision is obtained only after an interval of time, on the analogy of the rule in the ‘Brâhmaṇa and Parivrâjaka’ maxim.⁴

10

15

1. Ch. I. 248–250.

2. Ways of swearing several orders have been given by Manu Ch. VIII.

113. see Supra. p. 860 ll. 10–20.

3. This passage requires an explanation. Ordeals are of two kinds. (1) One in which the truth or falsehood of a claim is determined immediately on the spot without any interval of time, and (2) the other which requires some interval of time for a like determination. The ordeals of the *balance*, *fire* &c. are instances of the first, because if the man suffers injury in the performance of the ordeal, his defeat is determined then and there. The ordeal of an oath is an instance of the second, inasmuch as under the rules of this ordeal if any calamity befalls a party within a certain period after he takes an oath, he is presumed to have taken a false oath. This necessarily requires an interval of time to elapse. Thus the two types are distinguishable on the ground of their capacity to induce a *prompt* or a *deferred* decision (समन्तरानिर्णयनिमित्तत्वेन & कालांतरनिर्णयनिमित्तत्वेन).

3. This is called the ब्राह्मण-परिवाजक-न्याय. In such a sentence as ब्राह्मणानामन्त्रय परिवाजकांश्च the separate and additional mention of परिवाजक, who generally are included in the former term, merely emphasises their position as a special part of the general body. So here also, although the balance and oaths equally are both ordeals, still the latter have been specifically mentioned in order to bring out their capacity to induce a decision after an interval of time.

The enumeration, however, of (the ordeal of) *kos'a* along with
 (those of) the balance and the rest is due to its
 The Kosa applicability to serious charges and to complaints
 accompanied by a wager, and not to (any)

5 similarity with the ordeals of the balance and the rest, nor to its being
 helpful in enabling an immediate decision without any interval of time.

As for the (ordeals of) rice and the heated *mâsha*, although
 they are helpful in securing an immediate decision
 Rice and Mâsha without any interval of time, still as they are
 10 prescribed in petty complaints and in complaints
 on suspicion they are distinguished from the (ordeals of) balance and
 the like and hence their non-enumeration along with those; and this
 is a satisfactory explanation.

These ordeals and the oaths also may be resorted to in disputes
 15 regarding debts and the like, having regard to exigencies.

As for the text of Pitāmaha, *viz.* " In disputes regarding
 immovables, ordeals should by all means be avoided ", that is to be
 understood as meaning that when evidence in the form of documents
 20 or (the testimony) of neighbours and the like is available, ordeals
 should by all means be avoided.

An objection.—Indeed ordeals are also inadmissible even in
 other suits when other (kind of) evidence is available.

Answer.—True. In suits for the recovery of debts and the
 like, (nevertheless) even after the plaintiff has exhibited his witnesses
 25 (duly) qualified as mentioned before,¹ if the defendant resorts to an
 ordeal after giving an undertaking to suffer punishment (in case of
 failure) then an ordeal is also permissible. For it is likely that the
 witnesses may have corrupt motives, while an ordeal is free from all
 30 (such) faults, and the object of a law-suit is to find out the truth
 about the point in dispute, as indicated in its definition. As says
 Nârada²: " A decision based on an ordeal which is truth itself is
 a real decision according to *Dharma*, while a decision based on
 witness evidence is a merely legal decision. When a point can be

1. Verses 68, 69, p. 846.

2. Intro. Verse 11—The second half of the verse is different.

established by divine evidence, human or documentary evidence should not be used." The rule *viz.* "in disputes regarding immovables, when direct evidence such as the evidence of neighbours or the like is available, an ordeal should not be allowed even if the defendant resorts to it after giving an undertaking to suffer punishment (in case of failure)"—has been stated to remove the idea of an alternative¹ course. The text of Pitāmaha, *viz.*: "in disputes about immovables &c." is not intended to exclude ordeals absolutely as otherwise there would be the possibility of a non-decision when documentary evidence, testimony of neighbours, or similar evidence is not available. 10

Viramitrodaya.

'When the plaintiff has (agreed) to abide by the result,' thus it has been stated ; the Author states an exception to it

Yājñavalkya, Verse 96 (2).

When there is an accusation of a suspected treason against the king, or a heinous sin such as Brāhmaicide is suspected, ordeals may be performed without an offer of an agreement to abide by the result. By the word *atha*, 'and also', are included theft and the like offences. 15

That has been stated in the Kālikā Purāṇa : "In charges for adultery with other men's wives, as also for theft, and forbidden intercourse, and for great sins, shall an ordeal be ordered by the king. When there is a mutual conflict, and a wager is laid in a trial, there only the king should administer an ordeal preceded by an agreement to abide by the result. In an accusation for adultery with others' wives, where the complainants happen to be many, an ordeal shall be ordered without an agreement as it is for self exculpation." Viṣṇu² : "In charges for treason against the king, and also in assaults, the proceedings are commenced without an agreement to abide by the result." Pitāmaha : "For those who have fallen under the suspicion of kings, as also those who have been pointed out along with robbers, and also those who are anxious to have their innocence established, the ordeal should be offered with an agreement to abide by the result." Nārada³ : "Even without an agreement to abide by the result the king may administer

1. The meaning is that the alternative of an ordeal as an optional course is not allowed in disputes regarding immovables. The optional application has been restricted to specific cases. For विकल्प &c. See note 4 on pp. 708-709 above.

2. Ch. IX. 22.

3. Ch. I. 270.

ordeals to his dependents." Also¹: "An ordeal is proper only when the complainant offers to abide by the result of the test, excepting when ordered² by the king." 96 (2).

S'ulapâni.

Yâjñavalkya, Verse 96.

The person complained against, or the complainant may at their option (any one may) perform the ordeal. The other should offer to abide by the result. In cases of treason against the king, and in grave sins and the like (charges), however, even without any offer, the ordeal should 10 be performed. Ay says Vishnu³: "In charges of treason against the king, and of Sâhasas even without an agreement to abide by the result". Pitâmaha: "In cases where persons have fallen under the suspicion of kings, and also those who have been pointed at along with robbers, and those who are anxious to get themselves exonerated, an ordeal may be 15 administered without any offer (from the other side)". (96).

General Rules of procedure as to Ordeals.

Yâjñavalkya, Verse 97.

Having summoned one who has clothes on, who has bathed, and has observed a fast, (the Chief Judge) should 20 at sunrise cause him to undergo (any of) all the ordeals in the presence of the King and of the Brâhmaṇas..

Mitâksharâ :—Moreover, Prâdvivâkah, the *Chief Judge* àhûya, having summoned, at sunrise one, who on the previous day uposhitam, has observed a fast i. e. on the previous day, 25 sachailam snâtam, and who, has bathed with clothes on in the presence of the king, as also of the Brâhmaṇas and Councillors, kârayet, should cause him to undergo, (any of) all the ordeals sarvâni divyâni.

1. Narada Ch. I. 269.

2. नृपशासनात् is the reading in Viramitrodaya. The printed text of Nârada has नृपहिंसनात् 'excepting in cases of high treason'.—यदा पुनर्नृपगृहे काचिद्दिसा कृता भवति' असहायः:

3. Ch. IX. 22.

"To one who has fasted for three nights, or to one who has fasted for one night only, and who has purified himself and has wet clothes on, ordeals should always be administered". This optional rule as to fasting as laid down by Pitāmaha is to be actually interpreted by regard to the strength or weakness of the party, as also to the importance or triviality of the charges under consideration. The rule as to fasting, moreover, is applicable also to the Chief Judge who causes the ordeal to be undergone: "In the case of ordeals, (also) the Chief Judge who has fasted should by the King's permission himself observe all the necessary forms." *Vide* this text of Pitāmaha. 5

Here also although the expression used is "at sunrise" without any particularisation, still having regard to the practice among the wise and the respectable, the ordeals should be administered on a Sunday. And even there, the special rule laid down by Pitāmaha,¹ should be observed *viz.*: "In the first part of the day, shall be the test by fire; during the first part also shall be the balance; in the midday, however, the (ordeal of) water should be administered by one who desires to allow the principles of *Dharma*. In the first part of the day is proof by (the ordeal of) *kos'ha* ordained; while in the latter part of the night which is quite cool, (the ordeal of) poison may be offered." 15 20

As for the ordeals of the rice, the heated *mâsha*, and the like for which no special period has been prescribed, the administration should be also in the first half (of the day), *vide* the text of Nârada² which is quite general *viz.*—"In the forenoon, in regard to all the ordeals, has the administration been proclaimed." 25

Dividing a day in three parts, the first part is called the *Purvân̄ha*³, the middle the *Mâdhyân̄ha*, and the last the *Aparân̄ha*.

Moreover, another rule as regards the particular time has been indicated by texts which are in the nature of affirmative and negative injunctions. Of these, those indicated by affirmative injunctions 30

1. Also Nârada. See Aparârka p. 697.

2. Ch. I, 269.

3. Translated either as First part or "forenoon."

920 Mitakshara & Viramitrodaya—Different ordeals for different seasons. [*Yajñavalkya*
Verse 97.]

are as follows:—"For (the ordeal by) fire the cold seasons¹ of *Sis'ira* and *Hemanta*, also the autumn season of *Varshā* have been prescribed ; in the *Sarat* and *Grīshma* seasons the (ordeal by) water is (administered), and in the seasons of *Hemanta* and *Sis'ira* the (ordeal of) poison. The month of *Chaitra*, and of *Mārgasīrshha*, as also of *Vaiśākha* are months generally for all the ordeals as they are not unfavourable to these. The (ordeal of) *kos'a*, however may be administered always, and the balance at any time." The mention of *kos'a* is indicative by implication of all the oaths. Moreover the (ordeal of) rice may be administered at all times, since no special rule is mentioned (for it).

That indicated by negative injunctions is as follows—"In the cold season, 'there cannot be a purification by (the ordeal of) water, nor can there be in the hot season a purification by fire. Not in the rainy season should (the ordeal of) poison be administered, nor also in the midst of a heavy gale the (ordeal of) balance ; nor in the afternoon, nor in the twilight time, nor ever at mid-day".

By the use of the word *cold* (*Sūta*) in the text "there cannot be a purification by water in the season" the seasons of *Hemanta*, *Sis'ira*, and *Varshā* are also included by implication. And in the text : "nor can there be a purification by fire in the hot season," the repetition of the prohibition in the case of the *Grīshma* and the *Sarada* seasons which was already established by the affirmative injunction, is indicative of a *special injunction* (आदरार्थम्). The circumstances justifying (an ordeal) however will be mentioned further on.

Viramitrodaya

The Author states the procedure generally for ordeals

Yajñavalkya, Verse 97.

At the sunrise the Chief Judge should summon the performer of the ordeal who has bathed with clothes on and make him perform all the ordeals in the presence of the Brāhmaṇas, *vide Pitāmaha* : "To one

1. कृतुः—A season, or periods of the year commonly reckoned to be six, as : "शिशिरश्च वसन्तश्च ग्रीष्मेण वर्षाः शरद्विमः" viz. *Sis'ira*, *Vasanta*, *Grīshma*, *Varshā*, *Sarat* and *Hemanta*.

who has observed a fast for three nights, or to one who has fasted for one night, should always be administered the ordeals, to one who has cleansed himself and has a wet cloth on." The option as to a three-nights' or one night's fast is to be determined by regard to the capacity (of the performer), and by a discrimination between a serious charge and a petty complaint. 5

Also "In regard to the ordeals, all acts the Chief Judge should perform like the Chief priest in a sacrifice, with the observance of a fast and under the order of the king." This fast of the Chief Judge, however, is in the case of the worship of the subordinate deities in the 10
ordeal.

Here although it has been stated—"at the sunrise" in general terms, still from the usage of the respectable, Sunday is particularly meant. *Vide*¹ Nārada: "In the fore-noon only has been declared the administration of an ordeal". Pitāmaha: "In the fore-noon shall be the test by fire; and in the forenoon also shall be the balance; in the mid-day, however, should water be administered by one who desires to follow the principles of *Dharma*. In the first part of the day, the purification by *kos'a* has been ordained; while at night in the latter period should be administered poison, when it is quite cool". Similarly, 15
"The month of *Chaitra* and also *Mārgas'irṣha*, and similarly also *Vais'ākha*, these are the months generally for all ordeals, as they are not unfavourable. The Balance has been stated to be for all seasons: it should be avoided when a violent wind is blowing. The (ordeal by) fire has been declared to be during *S'iśira*, *Hemanta*, and *Varṣhā*; during 20
the *S'arad* and the *Grīshma*, the (ordeal by) water, and in the *Hemanta* and the *S'iśira*, the poison". Nārada²: "During the cold season, there cannot be the purification by water; nor can in the hot season there be the purification by fire; not during the rainy season should poison be administered; nor, O king, during a violent storm, the 25
balance". Here, in the word cold, are included the *Hemanta*, *S'iśira* and the *Varṣhā*. By the word hot, are included the *S'arad* and the *Grīshma*. 30

In the Astrology: "When Jupiter is in *Leo* or in *Capricorn*, as also when Venus is in obscurity, and in the intercalary month, the test should not be performed by one desirous of success. In a clean Sun, as also of the Jupiter. Nor when Venus has become invisible; also when the Sun is in the *Leo*, a test is not ordained by the wise. Not on the eighth, nor on the fourteenth, shall there be a test by 35

1. Ch. I, 269,

2. Ch. I, 259.

922 *Viramī, S'ūlapāṇī & Mitākṣharā,—General procedure for ordeals.* [*Yājñavalkya*
Verses 97-98.]

expiation. The test as also the inauguration shall be on a Saturday or a Monday".

Here, briefly the general procedure for ordeals is being written thus :—In the bright half, on an auspicious day, after having finished his daily performances, and with the observation of a fast, the performer after having got first the benediction repeated by the Brāhmaṇas, should select and appoint the Chief-Judge just as the chief Priest. The Chief Judge also after he is chosen and appointed, after the manner of the ritual of the consecration and donation of a tank, having performed the inauguration sacrifice, with the observance of a fast, on the day following, after having observed the daily performances, on a Sunday, should repeat thus : "Come, O divine Dharma come ; enter this ordeal, along with the Guardians of the world and the groups of the *Vasus*, *Ādityas* and the *Marutas*. There with a wet cloth on, the performer of the ordeal should perform the ordeal as ordained. Here the fast for three nights is for a performer of the ordeal who is capable. This is the distinction. (97).

S'ūlapāṇī.

Yājñavalkya, Verse 97.

20 'At sunrise', i. e. in the fore part of the day. Nārada : "To a man who has observed a fast for a day and night, who has bathed and has a wet cloth on, in the fore part of the day has the administration of all ordeals been declared". By this, the expression "who has bathed with clothes on" has a reference to wet clothes.

25 By some even this verse is not repeated. But Visvarūpa has included it in the text (97)

The author mentions special rules in the case of (several) persons liable (to an ordeal).

Yājñavalkya, Verse 98.

30 The (ordeal by) balance is (prescribed) for a woman, a child, an old man, a blind man, a cripple, a Brāhmaṇa, and one diseased ; (an ordeal by) fire or water (is for Kshatriyas or Vaisyas respectively) ; for a S'ūdra (the ordeal by) poison weighing seven barley-corns only.

Mitâkshârâ:—*stri*, *Women*, i. e. all women without regard to any particular caste, age, or position; *bâla*, a *child*, until he attains the sixteenth year, without regard to the particular caste; *vîddhah*, an *old man*, i. e. one who is above eighty; *andhah*, *blind man*, i. e. one deprived of the eyesight, *panguh*, a *cripple*, i. e. deprived of the use of the feet; *brâhmaṇa*, A *Brâhmaṇa*, i. e., the whole caste (*Brâhmaṇa*); *rogî*, *diseased*, i. e., one affected by a disease. The restrictive rule laid down is that for the purification of these, the (ordeal of) balance alone is allowed. 5

Agnih, the (ordeal by) fire, as also (that of) the plough (*Phâla*), and the heated *mâsha*¹ is for a *Kshatriya*; *jalam*, water, alone is for a *Vais'ya*. The word *wa*, or, has a restrictive sense. *Vîshasya yawâh*, the barley-corns of poison, *saptaiva*, i. e. seven only are (ordained) *S'ûdrasya*, for (the purification of) a *S'udra*. 15

By ordaining the (ordeal of) *balance* for a *Brâhmaṇa*, and the (ordeal of) poison weighing seven barley-corns only for a *S'udra*, the (ordeals of) fire or water come to be ordained for the *Kshatriya* and the *Vais'ya*. This very thing has been made clear by *Pitâmaha*: “For a *Brâhmaṇa* the (ordeal of) balance should be offered, the (ordeal by) fire for a *Kshatriya*, for a *Vais'ya* the water (ordeal) has been ordained, and (the ordeal of) poison should be administered to a *S'udra*. ” 20

As to what has been said² that there should be no ordeal in the case of women &c. viz: “An ordeal should

* Page 60. never be administered to persons engaged in performing a vow, to those afflicted with a heavy calamity, to the diseased, to the ascetics, or to women, if the rules of *Dharma* are to be attended to”—that is for removing the rule of option laid down in the text³—“or, with consent, the other may perform the ordeal.” 25

1. माषः—is a particular weight-measure of gold ; it is either the $\frac{1}{20}$ th part of a *Pâna*. ‘माषो विश्वातिमे भागो पणस्य परिकीर्तिः’—or is the eightfold of a *Gunjâ* गुञ्जामिरटभिर्षः—known in the Indian gold market as a *mâsâ* (मासा).

2. By Nârada I. 256.

3. Of Yâjñavalkya II. 96 see p. 913 1. 6-7 above.

The purport is this: In complaints regarding obstruction, when women are the complainants, the ordeal is allowed only for the persons complained against; and even when these¹ are the defendants, the ordeal shall be for the complainants only. In cross-complaints, however, an option only is allowed; and by this text even there, a restrictive rule has been imposed as to the balance only. Moreover, in complaints on suspicion about heinous sins, the (ordeal of) balance alone is prescribed for the women and others.

Thus this text has a purpose, in that it lays down a restrictive rule as to ordeals in the case of women and others when all ordeals are possible in the months of *Margas'irah*, *Chaitra*, and *Vais'akha* which are common to all ordeals.

Nor, moreover, should it be supposed that, (the ordeal of) the balance alone is prescribed for women at all times, since a rule has been laid down for their purification by the (ordeals of) balance, *kos'a*, and fire, omitting (those of) the poison and water in the text²: "And the (ordeal by) poison has not been ordained for women, nor has the (ordeal of) water been laid down; the real truth at the bottom should be sought for from them by means of the (ordeals of) balance and *kos'a*"; similarly the rule should be applied in the case of a child and others.

Similarly, even in the case of the Brâhmaṇas and others also, the rule as to the (ordeal of) balance &c. does not always apply, *vide* the text of Pitâmaha viz: "Purification by (the ordeal of) *kos'a* is ordained for all members of all castes; all these ordeals hold in the case of all with the exception of (the ordeal of) poison in the case of a Brâhmaṇa. Therefore when at the common periods the ordeals are equally possible this text is intended to restrict it to that of the balance only. During other periods, however, the ordeals prescribed at the respective times are (allowable) for all. Thus: "In the rainy season fire alone is (prescribed) for all. In the seasons of *Hemanta* and *S'is'ira* there is an option in the case of the three castes, viz. of the Kshatriya and others for the (the ordeals of) fire and poison. For a Brâhmaṇa, however, the (ordeal of) fire alone, and never (that of)

1. i. e. the women etc.

2. Of Nârada.

poison, is allowed ; *vide* the prohibition (contained) in the text¹ : “ with the exception of (the ordeal of) poison in the case of Brāhmaṇa.” During the seasons of *Grishma* and *S'arada* (the ordeal of) water alone (is allowed). Of those, however, for whom (the ordeals of) fire &c. are prohibited having regard to the special maladies from which they might be suffering, e. g. in the text.—“ The (ordeal of) fire should be avoided in the case of the lepers, and (that of) the water in the case of persons suffering from cough and heavy breathing; and the (ordeal of) poison should always be avoided in the case of persons suffering from bilious or phlegmatic complaints ”—in the case of such persons, even in the periods (specially) mentioned for (the ordeals of) fire &c. the common ordeals of the balance &c. alone are allowed. Similarly, having regard to the text—“(The ordeals of) water, fire and also (of) poison should be administered to strong men”—even in the case of weak men, having regard to the prohibitive rule in general, such ordeals should be administered as are conformable to the (special) caste, age, and surrounding circumstances, and as do not offend against the rules as to seasons and time.

Viramitrodaya.

In regard to the ordeals the Author mentions rules for the performer 20

Yājñavalkya, Verse 98.

For one who is below the age of sixteen, for the aged, for the blind, for a cripple, for a Brāhmaṇa, and also for one suffering from a disease, *Balance* is the ordeal. For a *S'udra*, however, the Fire, Water, 25 or of the Poison, (in which) portions measuring seven *yavas* may be given.

*Nārada*² : “ For a Brāhmaṇa the *Balance* should be given, for a Kshatriya, the *Fire*, the consumer of oblations ; for a *Vais'ya* should be given *Water*, and for a *S'udra* *Poison* only. Generally for all, the *kosa* has been declared by the thoughtful, excepting the *poison* in the case of a Brāhmaṇa ; for all, however, the *Balance* has been stated ”.

*Kātyāyana*³ : “ For a member of the kingly order the *Fire*, the *Balance* for the *Vipra*, and for the *Vais'ya* the *Water* should be administered ; or for all, all the ordeals, excepting the *poison* in the case of the

1. Of Pitāmaha. See above.

2 Ch. I. 334, 335.

3. Verses, 422-423.

foremost of the twice-born. The twice-born who follow the occupation of tending the cattle, the trades, also of artisans and dancers, as also of messengers and usurers, should be given like as to a *S'udra*". Similarly¹: "Not for the iron-smiths, the *Fire*, nor *Water* for the water-drinkers; 5 also for those experts in the operation of incantation should *Poison* be ever administered. An ordeal should always be avoided for men suffering from diseases; with the rice should be tested one engaged in a vow, or one suffering from a disease of the mouth". 'Engaged in a vow', i. e. a vow of consuming the rice.

10 Nârada, : "The eunuchs, persons devoid of virility, men oppressed with grief, as also minors, aged persons and the diseased, one should always test in the *Balance*. Not for those suffering from a disease shall the purification be by *Water*, nor shall the *Poison* be for those suffering from biliousness; for the lepers, the blind, and those 15 with distorted nails, the performance of the (ordeal by) fire is not ordained (255). Nor should be immersed the women and the infants by those well-versed in the science of religion; as also those who are diseased, or aged, also those men who are weak (313). Persons devoid of energy, those afflicted by a disease, nor those who are suffering should one 20 immerse in water; immediately they are immersed they might die, these men with a tender vitality (314). Even if these happen to be involved in a charge for a heinous offence, one should never immerse them in *water*; nor also should they be made to carry *fire*, nor should they be tested by *poison* (315)".

25. Pitâmaha : "To the drunkard, the voluptuous, as also to the rogues, the *kośa* should not be offered by wise men; as also to those who are unbelievers by nature". Kâtyâyana³ : "Upon a conflict with the usage of the country and the time, one should administer as may be proper relatively; an ordeal may be got performed by another⁴; this 30 is the rule on a conflict". 'On a conflict' i. e. when the accused is incompetent. Nârada : "For those who have entered upon a vow; those who are extremely troubled, those suffering from a disease, as also for those who are engaged in austerities, and for women, there cannot be an ordeal, if the rules of law are to be observed". Kâtyâyana⁵ : 35 "For those who are tainted with great sins, and especially for the

1. Kâtyâyana, Verse, 424.

2. Ch. I. 255, 313, 314, 315.

3. Verse, 436.

4. i. e. by one nominated by the accused, when he is not himself able to do the ordeal, but is anxious for an exonerations;

5. Verses, 431, 432.

unbelievers, for these an ordeal must not be given, and to one who is habitually addicted to sins ; so says Bhrgu (431). In the case of those sinful persons for whom ordeals are prohibited, these should with effort be tested through good men ; the king should not pronounce¹ defeat upon one against whom an accusation has been laid (432). (98). 5

S'ûlapâni.

By regard to particular class &c., the Author states particular ordeals

Yâjñavalkya, Verse 98.

For a Śûdra, a special rule has been mentioned by Nârada : "For a Brâhmaṇa should be given the *Balance*; for a Kshatriya *Fire* (the consumer of oblations); for a Vais'ya should be given *Water*; and for a Śûdra, however, *Poison* only. Generally for all, the *Kośa* has been declared by the wise; excepting the *Poison* for a Brâhmaṇa, or for all has been stated the *Balance*". 10
15

As to the text "for women, however, no ordeal can there be", by which an ordeal has been forbidden for women, that, however, has no reference to any other.—"For those involved in great sins, and in particular for the unbelievers, never should a king intent on the rules of Dharma administer an ordeal. For good people appointed by these 20 very men an ordeal may be proper". (98).

It has been said² (above) that "these ordeals are ordained in the case of serious charges." The Author now mentions that which makes for seriousness in a complaint

Yâjñavalkya, Verse 99 (1).

Never until (the subject matter of the dispute is below) a thousand should (the ordeal of) the plough, nor the (ordeal of) poison, nor also of the balance (be allowed). 25

Mitâksharâ:—While the subject-matter of the suit is less than a thousand *Panas*, the ordeals of the plough, the poison, or of the balance should not be caused to be made, and even the common ordeal of water also, as has been said³: "The ordeals beginning with

1. The reading here is नाभिशस्तं जयेन्टृपः. Elsewhere the reading is नाभिशस्तं त्यजेन्मतुः See Kane Verse 432.

2. Verse 95 p. 910.

3. By Pitâmaha.

the balance and ending with that of the poison should be administered in heavy cases." Here the non-mention of the (ordeal of) *kos'a* is accountable by its mention even in connection with petty complaints, in the text¹: "The (ordeal of) *kos'a* may be offered even in a petty case." The meaning is that these four ordeals are allowed only in cases for the amount of a thousand *Panas* or above, and not below.

5 An objection:—Indeed the ordeals of fire &c. have been specified by Pitāmaha even for (suits for) less, viz.: "In the case of a thousand, the (ordeal of) balance should be offered, so the iron² (ordeal) should be given for the half of a thousand; for the half of a half, however, the (ordeal of) water, and for the half of that, the (ordeal of) poison has been prescribed."

10 The Answer:—True. In such a case (however) the rule is to be thus interpreted and applied: The text of Pitāmaha is (to be accepted as) applicable to such properties by the deprivation of which there occurs a degradation, while the text of the Lord of the Yogis³ is to be taken as referring to other (kinds of) property. And, moreover, both these texts apply to cases of thefts and violent crimes. In the case of concealment, however, a special rule has been pointed out by Kātyāyana⁴ thus:—"In cases where there is a denial of payment, in such a case the quantity or amount (of the property) should be determined. In cases of theft and assault an ordeal should be administered even if the subject-matter be a trifle. Having ascertained the quantity of the property of whichever kind it may be,

15 20 25 30

its equivalent in gold should be determined, and then with a gold measure the ordeal should be administered. Having (thus) ascertained the amount (equivalent) in gold coins, for the loss of a hundred, (the ordeal of) poison has been ordained; for the loss of eighty, however, (the ordeal of) fire certainly should be offered. In the case of a loss of sixty, the (ordeal of) water should be given; while for forty the (ordeal of) balance. For a loss of twenty or ten, however, (the ordeal of) drinking of *kos'a* is ordained. The (ordeal of) rice is ordained for a loss of five and more or the half of its half. For its half or the half of this half, however, the heads of sons or the wife

1. Of Pitāmaha.

2. i.e. the fire.

3. i.e. Yājñavalkya.

4. Verses 416–421.

should be touched. For the loss of a half of this or of its half again, however, the means¹ of proof resorted to in this world have been ordained. A king thus discriminating does not fail in his *religious* or *secular* duties (*Dharma and Artha*)."

* Page 61.

5

In the passage² "Having ascertained the amount in gold coins," the term *gold* (coins) is indicative of the measure already mentioned above³ viz. "Sixteen Mâshas make a gold coin." Moreover, the word "loss" here is indicative of a "concealment." In the text⁴ "Never until the subject matter is below a thousand should the plough be allowed &c." the thousand of a copper pana should be understood.

10

15

It may be said—Indeed these ordeals have been mentioned in cases of sedition and other crimes, then what of the text⁴ "never until the subject-matter is below a thousand should the plough be allowed"? Anticipating this, the Author says

Yâjñavalkya, Verse 99 (2).

But in the cases of offences affecting the king, and in serious charges, the parties should always undergo an ordeal after having purified themselves.

20

Mitâksharâ :—In cases of sedition, as also in accusations of heinous crimes, always, without regard to the quantity or amount, (the parties) should perform ordeals after having purified themselves by fasting &c.

Similarly a special (rule as to) the place has also been mentioned by Nârada⁵: "Before the gates of the Court or of the Royal palace, or in sight of a temple, or in a cross-road, must be placed, firmly into the earth, after having been covered with perfumes, garlands and unguents." 'Must be placed' i.e. the

25

1. लौकिक्यः क्रिया: as opposed to देविक्यः. Worldly or human.

2. p. 928 ll. 23-25.

3. Âchâra Adhyâya Verse 363 p. 623 l. 3.

4. Of Yâjñavalkya 99 (1). p. 927.

5. Ch. I. 265, 266.

balance. The details have been mentioned by Kâtyâyana¹: “The trial of men accused of heinous crimes should be caused (by an ordeal) before the seat of the God Indra. Of those who are accused of having attempted sedition, the trial should be ordered to be held before the gate of the royal palace. For those born of a connection between a woman of a higher and a man of a lower class, the ordeal should be administered at a place where the roads cross. In the case of others than these, the ordeal should be offered in the court house. This is what the wise think. Of the untouchables, or persons belonging to the basest class, of the slaves, of the *mlechchhas*, of persons guilty of heinous crimes, and of persons born of a *Pratiloma*² connection the trial shall never be before the king. In case of doubts, the ordeals known as ordained in each case should respectively be administered.”

15

Here end the Rules of Procedure about the Ordeals.

Viramitrodaya.

By regard to the amount of money in particular cases, the Author states particular ordeals

Yâjñavalkya, Verse 99.

20 In a dispute for a debt &c. for less than a thousand *panas*, not the *plough*, nor the *poison*, nor either the *balance* should one administer.

30 *Nṛpārtheshu*, ‘in cases of offences against the king’ i. e. in charges of treason against the king ; *s'uchayah*, ‘after having purified themselves’ i. e. when they have cleansed themselves by bathing, &c., an ordeal like the *plough*, &c., *waheyuh*, ‘they should undergo’.

By the use of the word *tathâ*, ‘also’, is added that *water* should not be administered. By the word *cha*, ‘and’, are included the *sâhasas*. So also Vishnu³: “Now about the performance (of ordeals). In cases of treason against the king, and in *sâhasas*, according to the option. 35 In cases of deposits, and thefts, the amount (involved) is the measure.”

1. Verse, 434.

2. A *Pratiloma* connection is a union between a man of a lower, with a woman of a higher class, its converse is called the *Anuloma*; see Yâjn. Achara IV 90-96. pp. 241-261. above.

3. Ch. IX. 1-3.

Samayah, 'covenant', i.e. the ordeal, 'according to the option', i.e. in pursuance of the king's wish.

Kātyāyana¹: "Where a gift is denied falsely, there the amount² (involved) should be determined. In the case of theft and the *sahasas*, an ordeal should be given even for small amounts." Even for small &c., the meaning is that in those petty cases of debts, &c., where an ordeal does not exist, even for those amounts in cases of a theft and *sāhasa*, an ordeal is prescribed. 5

Brhaspati³: "The (ordeal by) *Poison*, when a thousand have been stolen; when a quarter less, the *fire*, (ordeal); when less by a third, the (ordeal by) *water*, and when a half is stolen, the *balance* should always be given. When however the accusation is for a four hundred, the *heated māsha* should be given; for a three hundred, the *rice* should be given, and the *kośa* for a half of it. When a hundred has been stolen or falsely denied, the trial should be by the (ordeal of) *Dharma*. For a cow-thief should be given by the councillors the purification by (the ordeal of) plough. These figures are in the case of persons of lowest degree; for (persons of) the middling (kind) has been stated to be the double; and four times for the highest should be determined and administered by the Judges." 10 15 20

Vishnu⁴: "In all money-transactions gold shall be regarded as the standard of value (4)....." Similarly, if it be less by a half of gold (*Krishnala*), the *kośa* should be offered to a Śudra. For more than that, the *Balance*, *Fire*, *Water* or *Poison*, according to the value. In one of double value the ordeal of oath as described before for a *Vaiśya*; for treble value for one of the kingly tribe, and for the quadruple value for a Brāhmaṇa. Not for a Brāhmaṇa should the *kośa* be offered, excepting for creating confidence as part of an agreement to be performed in future (16). In the place of a *kośa* a Brāhmaṇa may be made to take an oath only with (a clod of) earth dug up by a plough (17). In the case of a person with a previous conviction, even in a matter of a small value, one of the ordeals alone should be administered (18). For one whose good character is well known among good men, not even in cases of large values. (19)." 'Excepting,⁵ &c.'—Where an agreement has been made viz.: "We all jointly shall do this", excepting 25 30 35

1. Verse 416.

2. Meaning thereby that the question whether an ordeal should be given and if so which variety, would be determined after ascertaining the amount involved.

3. Ch. X. 9-12.

4. Ch. IX. 4; 10-19;

5. in Sutra 16 above.

932 **Viramitrodaya & S'ūlapāṇi**—Rules applicable to debts and donations. [*Yājñavalkya*
Verse 99.]

that. There, however, even for Brāhmaṇa, the *kos'a* may be given. Plough i. e. the furrow of an anchor.

5 **Katyāyana**: “After knowing the extent of all things, gold should be fixed as the standard ; and the ordeal should be presented according to the gold standard. For a loss which leaves a residue less by a quarter, the *Poison* and the *Fire* is observed there ; the *Water*, where the loss is less by a third part; for half of a hundred, the *Balance* has been stated ; the drinking of the *Kos'a* water, for its half, or for tenth, fifth, a seventh, or for half of that, the rice, and for half of that 10 the heated *māṣha*.” ‘Of a hundred of goldless than by a quarter’, i. e., seventy-five gold coins ; ‘less by a third part’, i. e. a third part of a hundred gold ; ‘its half’ i. e. half of a hundred, ‘for tenth, fifth, seventh, i. e. for a tenth part of a hundred, fifth part, or a seventh part,—the drinking of the *Kos'a* water. This is the meaning. Here, 15 moreover, the small proportion is in regard to the lower classes. **Vṛdha Manu**: “Having ascertained the quantity in gold, for the loss of a hundred, the *Poison* has been stated ; for the loss of eighty, however, should be given the *Fire*; when the loss is of sixty (gold), *Water* should be administered ; for a forty, shall be the *Balance*. For 20 the loss of thirty or of ten, Brhaspati prescribes the drinking of the *Kos'a* ; for the loss of five, or a half or of its half, the *Rice*”. ‘Thirty &c.’ i. e. for the loss of thirty or for the loss of ten. ‘Five’ &c. of the half a five or of its half or for the loss of one, the drinking of the *Kośa* water. This is the meaning.

25 These texts are in reference to debts &c. as also in regard to things given away. The text of the Author, however, is in reference to one who commits theft. Thus there is no contradiction, so they say.

Here end the Rules of Procedure for Ordeals.

S'ūlapāṇi.

30

Yājñavalkya, Verse 99.

In an accusation for a thousand only shall be an ordeal by fire &c. *Nṛpārtheśhu*, ‘in regard to king’, i. e. in charges of treason against the king &c., and also in accusations for heinous sins, after being purified by a bath &c., they should carry *fire*. **Brhaspati**²: “*Poison*, when a thousand 35 has been stolen; for a quarter less, the *fire*; when less by a third, the *water*; and for a half, the *balance*, should always be given. When the

1. Verse 417.

2. X. 9-12.

accusation is for a four hundred, should be given the heated *másha*; for a three hundred, the rice should be given, and the *kośa* for a half of it; when a hundred is stolen or also falsely denied, the purification by *Dharma* should be administered. For a cow-thief should be given by the councillors the (ordeal of) plough by all efforts. These figures are for the lowest; for the middling, the double has been stated; and four times for the best should be fixed by the judges". "For the lowest" i. e. by caste, occupation and qualification. (99).

Thus ends the Chapter on the Procedure for Ordeals.

Having thus stated the rules of procedure applicable to 10 all kinds of ordeals, the Author now mentions the process of administering the ordeals of the balance and others

Yājñavalkya, Verses 100, 101, 102.

When men versed in holding a balance have seated a party therein, weighed him against an equal weight, 15 marked a line, and caused him to descend, (100)

"O balance, thou art the abode of truth and wert created by the gods in the olden times, therefore, O auspicious one, speak the truth, free me from suspicion. (101).

O, mother, if it be that I am the sinner then carry 20 me down. If I am pure, carry me upwards". Thus should he invoke the balance, (102).

Mitākṣhara :—Those who know the *holding*, *dhāraṇam*, i. e. the weighing of a balance, i. e. the goldsmiths and others, by these *pratimānena*, by 25 means of another measure, e. g. clay &c. *sambhūtah*, having been weighed against an equal weight i. e. having been made equal (in weight), and, *tulāmasritah*, having been seated in the balance, i. e. seated into it, the party, i.e. either the defendant or the complainant, *rekhām kṛtwā*, having drawn the line, determining the ordeal, i. e. having, by means of a white chalk, drawn a mark round that side of the balance wherein he was seated in the position of an equilibrium, and, *avatāritah*, having been made to descend,

tulāmabhimantrayet, he should invoke the balance, i. e. offer a prayer to the balance by the following *mantra*, viz.—“O balance, thou art the seat of truth, (and) purā, in olden times, thou wert, devaiḥ, by the gods, i. e. by the *Hiranyagarbha*, and others, vinirmitah, 5 created, i. e. manufactured. Tat, therefore, i. e. for that reason, wada, speak, i. e. point out, satyam, the truth, i. e. the real nature of the matter in dispute. Oh, kalyāṇi, auspicious, i. e. good one, sans'ayānmāṁ vimochaya, free me from this suspicion. Mātar yadyaham pāpakṛt, Oh mother if it be that I am the sinner, 10 i.e. am telling an untruth, tato māṁ twam adho naya, then you should carry me down. If, however, s'uddhaḥ, I am pure, i. e. am telling the truth, māṁ urdhvam gamaya, then carry me upwards.”

The form of prayer for the Chief Judge for addressing the balance has been laid down in other *Smṛtis*. The present *mantra*, 15 however, is for him who performs the ordeal. The test of a success or a defeat is, moreover, obtainable as being indicated by the *mantra* itself, and so has not been mentioned separately.

The construction of the balance, however, having for its object the seating of the party (with it), has been lucidly described by 20 Pitāmaha, Nārada and others thus:—

“The wise should construct a balance after saluting the guardian deities of the quarters, and after cutting down with the incantation of the hymns a sacred tree from which a sacrificial post is obtained. The hymn to be repeated softly at the time of cutting 25 the tree is the one addressed to the God Soma¹. A quadrangular balance should be made which should also be strong and straight. Rings should be fastened at three places and with a purpose. The balance should be four *Hastas* in length, and the two posts also should be of equal measure. The space intervening between the two, however, 30 should be two *Hastas* or half a *hasta* more; and

* Page 62. the two (remaining) *Hastas* of both the posts should be dug into the earth. Moreover, two arches should be created in the rear of both the posts, and (these) should always be higher by ten *Angulas* than the balance. Then,

1. Thus: सोमो धेनुं गौतमः सोमविष्टप् जपे विनियोगः । “सोमो धेनुं”.

two suspenders of clay, should be prepared, hanging downwards from the arches suspended by ropes and touching the head of the balance. A firm balance facing towards the east should be erected on a holy spot, two scales should be fastened to the sides of both (the posts), and the (blades of the) *darbha* grass should be placed in both the seats with their ends turned towards the East. In the scale towards the west should be weighed the parties (performing the ordeal), and in the other pure clay. There (*i.e.* on this side) he should place a basket and fill it with bricks, stones, and sand.”

Here, however, there is an option as to the selection of clay, 10 bricks, stones, or sand.

“ Persons should be appointed as judges who are well-versed in the weighing of balances viz.: the grocers, the goldsmiths, as also the bronze-smiths. The Judges should always make the balance even and in a line with the suspender, and the wise should place water over the balance; that balance should be considered as even wherein the water does not move.”

“ Having first weighed the man and after having got him down, the balance should always be kept adorned with bunting and flags, and then one knowing the *mantras* should invoke the gods as described in the following procedure: Thereafter the Chief Judge with the flourish of music, with his face towards the East, and with folded hands bearing fragrant odours, flowers, and besmearings, should repeat the following (prayer): “O God Dharma, come, O, come, and be seated in this ordeal accompanied by the Guardian Deities of the quarters and by the groups of the Vasus, Ādityas and Maruts.”

“ After having invoked the God Dharma¹ (to be seated) in the balance, thereafter the (other) parts should be distributed (as follows): Having seated Indra in the East, and the Lord of the Dead in the South, Varuṇa in the portion towards the West, and Kubera in the North, he should seat Agni and other Guardian Deities of the quarter in the parts in the corners.”

“ Indra has the yellow colour, Yama the blue, and the colour of Varuṇa is like that of *sphatika* stone. Kubera, moreover, has the

1. Law or the Deity presiding the Law.

936 *Mita.—The Vasus, Adityas, Rudras, Maruts and the Mother Deities.* [*Yâjñavalkya*
Verses 100-102.]

lustre of gold, and the god of Fire also possesses the golden hue. Similarly the Nirṛtiḥ is known to be blue and Wâyu (the god of wind) smoky. Is'âna is, however, red. Thus should all these be contemplated in the order (mentioned above). ”

5 “ A wise man should worship the Vasus on the southern side of Indra. Dharâ, Dhruva, and similarly Soma, Āpa, Anila, Nala, Pratyûsha, and Prabhâta, are known as the eight Vasus.”

10 “ Similarly the group of the Adityas should be placed between the Lord of the Gods and the I'sâna. Dhâtâ, Aryamâ, and Mitra, so also, Varuṇah, Añs'uh and Bhagah, likewise Indra, Vivaswân, and Pûshâ and Parjanya known as the tenth ; then Twashtâ and then Viṣhnu not the last though born of the last,¹ these are the twelve Adityas described by their names.”

15 “ The point towards the west of Agni is known to be the place for the Rudras, Virabhadra, S'ambhuḥ, Giris'a of great fame, Ajaikapâd, Ahir-bhudhnya, Pinâki the never-defeated ; so also Bhuvanâdhîśvarah, Kapâlî, the lord of the people, Sthânuḥ, Bhavaḥ and Bhagawân are known to be the eleven Rudras.”

50 “ Between the Lord of the dead and Raksha a place should be assigned for the Mother Deities viz.: Brâhmî, Mâhes'warî, and also Vaishnâvi, Vârâhi, Mâhendri, and Châmuṇḍâ accompanied by the bands of the followers.”

25 “ The points to the north of Nirṛti is known to be the place for Ganes'a, and the place for the Maruts is said to be at the northern side of Varuna ; Gaganah, Spars'anah, Vâyuh, Anilah, and also Mârutah, Prânah, and the two viz., Prânes'a and Jîva are known as the eight Maruts. A wise man should invoke the goddess Durgâ at the northern side of the balance.”

30 “ The worship of these deities is however known to be by (repeating) their own names. Having offered worship to the God Dharma² commencing with the arghya and ending with decorations

1. i. e. the last order, or the Rudras of. “ एकादशस्तथा त्वष्टा द्वादशो विष्णुरुच्यते । जयन्यजस्तु सर्वेषामादित्यानां गुणाधिकः ॥ ॥ महाभारते I. 65, 16.

2. The principal deity प्रधानदेवता in this ritual.

&c.; thereafter a similar worship should be offered to the other¹ deities viz. commencing with the *arghya* and ending with decorations the service should commence with *gandha* (sandal-paste) and end with *naivedya*."

Here, moreover, having duly constructed a balance adorned with buntings and flags, and having invoked thereon the God Dharma with the hymn—"Come, O come &c.", and

*Page 63. with the formula, "I offer this Arghya to Dharma; bow to him, &c." having offered *arghya*, *pādya*

and water, *madhuparka* and water again, a bath, clothes, the sacred thread and the water ending with the offer of the crown, the bracelets and other ornaments, and then to the other deities commencing with the god Indra and ending with the goddess Durgâ, with the repetition of the *om* (ॐ) at the beginning² of the name of each deity and with the dative case at the end, and having offered worship to them commencing with the *arghya* and ending with decorations, he should then offer to the god Dharma the *gandha* (sandal paste), flowers, burnt perfumes, light, and the *Naivedya*, and then should offer as before to the god Indra and others the worship commencing with the *gandha*. The sandal and flowers for the worship of the balance should be (of a) red (colour), as says Nârada: "With the red sandal paste, red flowers, curdled milk, fried puddings, the rice grains &c. first (he) should offer worship &c. to the balance and then he should do honour to the respectable (people present there)." Of Indra and other gods the worship may be (offered) with red or other flowers such as are available (at the time), as no special rule has been mentioned. Thus should be the order of worship.

All this, moreover, the Chief Judge should do. As has been said³: "Then the Chief Judge, a Brâhmaṇa, who has completely mastered the Vedas and the Vedangas, who is accomplished by his learning as well as his conduct, whose mind is calm, and who is free from feelings of jealousy, who is the essence of truthfulness, who is pure, and who is watchful and devoted to the welfare of all beings,

1. i.e. the secondary or subordinate deities अंगदेवता: In every performance there is a प्रधानदेवता the principal Deity and the rest are accessories, अंगदेवता:

2. This ॐ इद्रायनमः &c.

3. By Nârada.

who has observed a fast and who after cleaning his teeth has worn a clean cloth, should do worship to all the deities as prescribed by the ordinances." Moreover, a sacrifice should be offered in the *Laukika* fire by the four *Rtuajas* in the four quarters, as is said¹: "Similarly 5 a sacrifice should be offered in the four quarters by those who have completely mastered the Vedas, by means of ghee, and holy articles of sacrifice, and with the *samidhs* which are the (usual) means of a sacrifice, by repeating the Sâvitri and the Prañava mantras with the words *swâhâ* at the end of each." The meaning is that each of the 10 three articles viz. the *samidh*, ghee and the rice should be offered 10S times each with the repetition of the *gâyatri* with the *pranava* at its commencement and again with the addition of the *pranava* at the end after the offer of the oblations with the words *swâhâ*.

Thus having performed the worship of the deities with the 15 oblations as the last, thereafter, having written on a leaf the subject-matter of the dispute, it should be placed on the head of the person wishing to perform the ordeal. As has been said:² "Having written on a leaflet, whatever is the subject-matter of the accusation, it should be placed on the head with (the repetition) of this mantra." 20 The Mantra, moreover, is this: "The sun, and the moon, the fire, the wind, the sky, the earth, the water, the heart, the god Yama, the day as well as the night, and the two evenings, and Dharma, each one knows the action of men." Moreover, the part of the ceremonial commencing with the invocation of the Dharma and 25 ending with the placing of the leaf on the head, is common to all the ordeals, as has been said: "The whole of this ceremonial preceding the *Mantra* should be observed in all the ordeals; similarly should be observed the invocation of gods."

Thereafter the chief Judge should invoke the balance, *vide* the 30 text:³ "One knowing the Sâstra should also invoke the balance with this formula and the *mantras* also have been indicated viz.: "O balance, you have been created by the Creator for testing the sinful. From the letter *dha* (in your name) you are the incarnation of Dharma ; and since from the letter *ta* in your name you determine a

1. By Pitâmaha.

2. By Nârada,

3. By Pitâmaha.

guilty individual when he is weighed (in you), therefore you are known as the *Dhāta*. You know the sins as well as the good deeds of all beings. O God, you alone know those things which mortals do not know. This man who has been accused in a judicial proceeding wishes to establish his innocence; therefore, O Lord, you should be pleased to save him from this suspicion according to the rules of Dharma." The person wishing for an acquittal however should invoke the balance with the *mantra* given above viz. "O balance &c." Thereafter the chief Judge shall place in the balance the person wishing to perform the ordeal, and having placed on his head the leaf, and after seating him in his proper place; *vide* the text: "Should again be seated in it, after having placed the document on him." And while so seated he should be made to sit in that condition for an interval of five *vinādis*¹; one knowing the science of astronomy should determine this interval of time, *vide* the text²: "One knowing astronomy and who is the best of Brāhmaṇa should determine the interval of time; the interval of five *vinādis* should be determined by those who are experts in determining time. The interval required for pronouncing ten long letters is known as a *prāṇa*; six *prāṇas* make a *vinādi*. It has also been said: "(the interval required for pronouncing) ten long letters is called a *prāṇa*, six *prāṇas* make a *vinādi*, sixty of these a *ghāti*, and of sixty *ghātis* is said to be made a day and night." With 30³ days is made a month.

During this interval, moreover, pure men should be appointed by the king for determining the acquittal or non-acquittal, and these will declare the acquittal or non-acquittal as has been said by Pitāmaha: "Among the umpires the best Brāhmaṇas who would depose only such as has been seen by them, who are wise, pure, and who are not covetous should be appointed by the king. Umpires

5

10

15

20

25

1. विनादि see further on, a measure of time equal to 1/60th part of a *Ghati*—24 Seconds.

2. खातिभिः—ख-the sky-0, & आत्री-3; and according to the general rule अंकानां वापतो गतिः; this can be written as 30.

3. The method by which this figure of thirty is arrived at, is explained above.

of (such a) high character will then inform the king of (his) innocence or non-innocence.

The condition for determining the innocence or non-innocence has, moreover, been laid down¹ thus: "If, on 5 * Page 64. being weighed he rises, he is undoubtedly innocent. If his weight remains the same as before, or if he goes down, he cannot be acquitted."

As to what has been said by Pitâmaha:—"One who will show an equal weight is guilty to a small extent, while he whose 10 guilt is large, goes down."—there, although the smallness or the largeness of the matter under complaint cannot be determined by an ordeal,² still the smallness or largeness of the punishment would be determined thereby—viz the (punishment) would be small if the act is done only once or unintentionally, while it would be 15 great if the act is repeated more than once, or has been committed intentionally.

When, however, without any austensible cause, the scales &c. burst or break, even then, there is a non-acquittal *vide* the text³: "Should the base burst, or the scales break, or the beams or the 20 hooks split, or the strings burst, or the transverse beam break, a non-acquittal should similarly be declared (as stated before)".

Kakshâ is the base of the balance; the two *Karkatas* are the two iron-hooks slightly bent, fixed at the two ends of the balance to support the scales and resembling the thorns of a crab (कर्कट). 25 The *Aksha* is the piece of the beam to be placed on the two base-pillars, for holding the balance. When, however, these break on account of a cause which is ascertainable, then he should be placed again, *vide* the text: "In the case when the scales &c. burst or break, the man should again be placed."

1. By Nârada. I. 283.

2. i. e. the same having already been stated in the leaf placed on the man's head.

3. Nârada. I. 284. The text actually to the found in the edition of Dr. Jolly is, however, quite the opposite of this: the last line there being मूर्तिः शुद्धिमादिशेत्—"shall pronounce a formal declaration of his innocence," Kâtyâyana, suggests a re-trial, See Verse 440.

Thereafter "The king should please the *Rtwiks*¹, *Purohitas*, and the *Āchārya* by means of *dakshinas*. A king causing these to be made in this manner, after having enjoyed (all) the pleasures of enjoyment, obtains great reputation and is entitled in the end to absolution."

5

When, however, the king wishes to maintain in the same condition and permanently the balance as described above, then he should build a house for it in order to protect it from damage from the crows &c. *vide* the text²: "A balance-house should be erected which should have a wide space, which should be high, and be white-washed, and its should be so situated where the balance (when placed,) would not be damaged by dogs, or the *chāndālas*, or crows. There also he should cause to be (invoked and) seated in several quarters the guardian deities of the quarters and other deities, and should cause their worship to be made there at the three changing periods of the day by means of sandal-paste, flowers, and (other) unctions. He should have it protected by doors, store seeds therein, and have it watched by the guards, should cause earth, water, and fire to be placed therein, and should not allow it to remain unattended³". Seeds *i. e.* of barley, rice &c.

10

15

20

Here ends the Ordeal by Balance.

Viramitrodaya

Thus, having stated the procedure applicable to all ordeals, now the Author states upto the end of the Chapter the special rules of Procedure for each of the ordeals viz. *Balance* and the rest.

25

Yājñavalkya, Verses 100, 101, 102.

Those who know the holding *i. e.* the balancing of the scales such as the goldsmiths &c. by these, *Lekhyam*⁴, 'a writing' such as 'I did not commit theft' and of a like nature, having placed on the head, and

1. A *Rtwik* is the head-priest at a sacrifice; a *Purohita* is the head family priest; and an *Āchārya* is one who imparts instruction in the Vedic lore. [See Yajn.: I. 34 35 pp. 126-127 above (Vol. I; Part I); Manu. II. 140-143.]

2. Of Pitāmaha.

3. *i. e.* the place should not be left deserted; a guard should always be placed to protect the machinery and to help its being kept in tact.

4. लेघं कृत्वा. The *Mitāksharā* reads रेखां कृत्वा, and *Sūlapāṇi* etc. prefer to have the same reading. *Viśvarūpa* reads लेखाःकृत्वा, but interprets it similarly as the *Mitāksharā*.

as against a counterpoise, equalised and so placed in the balance, the person complained against i. e. the performer of the ordeal, and having been *made to descend* into it, with the invocation, “(free) me &c.” he should address the balance i. e. on the day of his being seated, he 5 should pray with this *mantra*¹.

On the second day, moreover, if the person balanced incase i. e. goes higher up the equipoised weight in the other scale, then he is (declared to be) exonerated i. e. is clearly found to be not amenable to the accusation i. e. there would be no longer any suspicion of a charge; 10 if, however, he is found to be equal or lower than the counterpoise, then the performer of the ordeal shall not be regarded as exonerated; he shall be deemed to have been defeated. This verse viz “Weighed &c.” is stated in the *Mitāksharā* in the name of *Pitāmaha*.

The explanation of the *mantra* is, moreover, as follows: 15 “O balance, you are the abode i. e. the place, of truth ; by the gods i. e. by Brāhma &c. formerly i. e. in the first creation, you were created i. e. produced ; therefore i. e. for that reason, O auspicious one, speak i. e. point out the truth, i. e. according to facts ; and from this suspicion free me.”

20 “O mother, if I am a sinner i. e. am speaking an untruth, then i. e. in that case lead me down ; if I am pure i. e. am speaking the truth, then carry me upwards.”

Here, after the manner of the (*mahādāna*) ‘Prime donation’ of a Weighment Deity (*Tulā-puruṣha*)² including a little more in particular 25 matters in the balance so prepared on the day of the weighment,³ after the writing of the statement solemnly declaring the absence of any cause for the charge against him, and after writing the *mantra*, “The Sun, the Moon, the Fire, the Wind, the Sky, the Earth, the

1. *Mitramiśra* reads after verse 100 the following verse viz.: “तुलितो यदि वर्धेत विशुद्धः स्यान्न संशयः । समो वा हीयमानो वा न विशुद्धो मवेच्चरः ॥.” which he says that the author of the *Mitāksharā*, has assigned to *Pitāmaha*, while *Visvarūpa* cites it as a text of *Nārada*, in which *Smṛti* also it is stated at Ch. I. 283. As a matter of fact, however, *Vijñaneśvara* does not mention any writer; he simply says, ‘it is stated’. *The Smṛtichandrika* also quotes it as a *Nārada* text p. 110; l. 3.

2. तुलापुरुषमहादान—set out at details in the *Dāna Mayūkha* with an extract from the *Garudapurāṇa*: The object stated is the removal of all kinds of diseases नानारोगमादिस्तुलादिभिः. See also *Bālambhaṭṭi* *Achāra*. P. 486.

3. Lit: On the day of his being placed in the balance ; ‘तुलायांमधिवासदिने.’

Water, the heart, and the God *Yama*, the day, and also the night, and the two evenings, each one knows the actions of men and the Dharma¹" ; and after placing that document on his head, the Chief Judge should cause the performer of the ordeal in the balance after it is counterpoised, with the repetition of the invocation *mantra* ; and on the next day after the completion of the daily performances, with face towards the East with folded hands, invoke the Gods in the balance with the *mantra* as set out before, viz., "Come, O come thou the revered Dharma". Thereafter he should perform the worship of the Gods as stated by Pitāmaha, as follows: [Here follow the same verses as are set out above in the *Mitāksharā* 10 at p. 935 l. 29. as far as p. 937 l. 4.]

Then should be offered by four *Rtviks* versed in the *Vedas* oblations, each of the *samidhs*, *ghee*, and cooked rice, commencing with the *Prāṇa*, the *Gāyatri* and ending with the *Praṇava* and the word *swāhā*, on the four sides of the balance in the *Lauhika* fire. Then the Chief Judge should address the Balance—There the *mantras* are these (see above *Mitāksharā*, p. 938, l. 31 to p. 939 l. 7). Then the Chief Judge should place the performer of the ordeal with the written document on his head, on the balance for an interval of five *Vinādis*. A *Vinādi* is defined thus: "Ten long letters make a *prāṇa*, and six *prāṇas*, make a *vinādīka*". Thereafter one who goes up, the king's messengers should declare him to be innocent and exonerated. This is in short the substance. Here the measurement and the word for the balance and other details have not been stated out of fear of prolixity. These should be sought for in the statement for *Mahādāna*. (100-104).

15

20

25

S'ūlapāni.

Yājñavalkya, Verses 100, 101, 102.

Men conversant with holding the balance such as the grocers &c., after having equipoised the person complained against by means of stones and such like counterpoise, and when thus equipoised by the counterpoise, should mark with a white line the scale adjusted by the fall of strings, and after the person is made to get into it, he should repeat this *Mantra*.

Nārada²: "After having well fastened the two scales by the hooks of the beam, he should place the man in one scale and the stone in the other; should place the person in the northern scale and the stone

30

35

1. 'धर्मस्य' is the reading in *Viramitrodaya* for 'धर्मश्च' in the *Mitāksharā*.

2. Ch. I. 271-272.

in the other, in that towards the south; there he should fix a basket with bricks, sand, grains, and balls".

The meaning is that he should address the scale with the mantra. "Thou O, Balance, you are the abode of truth". Here the success or defeat should be inferred from the indication of the balance going up or down. So Pitāmaha : "When weighed if he is (found to have) increased, he becomes exonerated according to (Dharma) law. If he goes down, he is not exonerated according to some; if equal, he is innocent. One with a small guilt is equal; but one whose guilt is great goes down. By 10 the preponderance of Dharma and its power, one who excels (in weight) is declared pure". By saying "according to some", is meant that he should be examined again. So Brhaspati¹: "If the person complained against when weighed in a balance goes down, he shall be declared guilty; if, however, he remains equal in level, he may be weighed again; 15 one who goes up shall be declared to be successful". Vyāsa : "One who goes down is not declared to be innocent; one who goes up is declared pure; one who is level is also not considered to be pure; this is the rule about purification². "Should the scales break or the beam or the bolts break, or the strings burst, or the transverse beam split, the king 20 shall administer the ordeal again". By the expression 'he is not declared innocent' is meant that he shall not be deemed to have succeeded, not that he is defeated". (102).

Thus ends the Chapter regarding the Balance.

The Ordeal by Fire.

Now the Author describes the *Ordeal by Fire* coming up in its turn

Yājñavalkya, Verse 103.

After the hands of one, by whom rice paddy have been rubbed, have been marked, seven leaves of Asvattha³ 30 should be placed on them, and as many (rounds of) threads should be coiled around.

1. Ch. X. 19.

2. Cf. Narada I. 284. According to Narada, however, a formal pronunciation of the innocence is recommended, while according to this text a re-trial is ordered.

3. Known as बिष्णु. The *Ficus Religiosa*.

Mitâksharâ :—With the general rules of procedure laid down for ordeals having been complied with, and after the ceremonial commencing with the invocation of the God Dharma and ending with the placing of the document on the head, as described in the ordeal by balance has been gone through, this special rule (of procedure) is laid down in the case of the ordeal by fire. 5

Vimrditavrihi, (*one*) by whom rice paddy have been rubbed, i.e. one by whom has been rubbed i.e. pressed, the rice paddy with both (the palms of) his hands, such a one is called *vimrditavrihi*. After the karaū, *hands*, of him lakshayitwâ, have been marked, i.e. marked, with the juice of red lac &c. those parts bearing a spot, a curl, a scar, or a corn &c. as says Nârada¹: “All sores or scars on his hands should be marked with signs². ” Thereafter Saptas’watthasya parnâni, seven leaves of *Asvattha*, nyaset, should be placed, on the two hands joined together, *vide* the text³: “Having covered his two hands joined together with seven *As’vattha* leaves of equal size.” These, moreover, together with the hands should be *veshtayet*, coiled round, with thread, as many times as there are the *Asvattha* leaves i.e. the meaning is that it should be coiled in seven rounds. 10

The threads, moreover, should be seven and white, *vide* the text of Nârada: “The two hands should be covered round by seven strings of white thread.” Then seven leaves of *Sami*, also seven blades of the *Dûrwa*⁴ grass, and the rice *akshatas*, as also rice besmeared with curds, (all these) should be spread over the *asvattha* leaves, *vide* the text: “He should spread seven *pippala* leaves, the *s’ami* leaves, as also the rice, seven blades of *dûrwâ* grass, and rice besmeared with curds.” Also should the flowers be spread, *vide* the text of Pitâmaha: “Seven leaves of *As’vattha*, the rice, the flowers, and curds should be placed on the two (palms of the) hands, and then the same should be coiled round.’ *Sumanasah*, means flowers. Although there is a text viz.: “He should be considered pure who remains 15 20 25 30

1. Ch. I. 301.

2. A हंसपद is the same as a काकपद, ‘the sign.’

3. Of Nârada,

4. The *Cynodon Dactylon*.

946

S'ūlapāṇi & Mitākṣharā—Covering the hands.[*Yājñavalkya*
Verses 103-104.]

unscathed at the seventh step while bearing the heated iron in his hands covered with seven leaves of the *Arka*¹

* Page 65. tree", still that should be understood as meaning that the *arka* leaves are to be taken in the absence of the *As'wattha* leaves, as the importance of the *as'wattha* leaves is inferrable from the text of *Pitāmaha* in praise thereof viz.:—"From the *Pippala* tree fire is produced, the *pippala* is known as the lord of trees ; hence a wise man should spread its leaves on the hands."

10

S'ūlapāṇi.

The Author states the ordeal by fire.

Yājñavalkya, Verse 103.

If the hands have scars or sores on account of the crushing of the paddy grains, these should be noticed and in those places of scars, marks should be made with lac drops. So Nārada²: "On all scars and sores on the palms of the hands marked previously..... after placing seven leaves of the *pippala* tree, should encircle with seven strings." (103).

The Author now mentions the *mantra* invoking the Fire to be repeated by the person performing the ordeal

20

Yājñavalkya, Verse 104.

"O Fire thou pervadest the innermost parts of all created beings, you are the purifier. O omniscient, declare like a witness, the truth about me from my virtues and sins."

25

Mitāksharā :—*Agne twam sarvabhūtānām, O fire you, of all beings, i. e. the viviparous and oviparous animals, the insects born of sweat, as well as the plants germinating from sprouts, antah, in the innermost recesses, i. e. inside their bodies, charasi, pervadest, i. e. remainest there as the digester of all food and drink used; Pāvaka, purifying; i. e. the purifying cause; kave, (O) Omnipotent, i. e. knowing all, sākshivat punyapāpebhayah*

30

1. The *Calotropis Gigantea*.

2. Ch. V. 301.

3. उद्दिज्जः उद्दिज्जाः स्थावराः सर्वे वीजकांडप्ररोहिणः Manu I. 46.

satyam brūhi, declare like a witness the truth about me from my virtues and sins. The oblative case in the expression *punya-papebh�ah* is formed by dropping the य्[॒]॑. The meaning is that having observed my virtues and sins, speak the truth (about me).

When the iron ball is well heated by the three fires and after it is brought out by means of a pair of tongs, the person desirous of performing the ordeal standing in the western enclosure with his face towards the east, should invoke the Fire by means of this *mantra* as says Nârada²: “An iron ball fifty Palas in weight, having been made fiery, sparkling, and redhot, and after it has been heated thrice, thus should one address it in the language of truth.” The meaning of this is: In order that the iron may be purified, the iron ball which has been well heated should be thrown into water, and again heated, and again thrown into water, and heating it a third time in the fire, and having then brought it forth by means of a pair of tongs, the performer (of the ordeal) should address it in the language of truth, i. e. containing truthful words, with the *mantrâ*: “O fire thou pervadest all created beings &c.”

The Chief Judge, however, having kindled the fire called *Laukika*³, towards the southern side of the enclosure, should offer 108 times the oblations of ghee with the *mantra* :—“This is being offered to fire the purifier”, *vide* the *text*: “The (oblations of) ghee a 108 times.” Having offered the oblations, and having thrown the iron ball into the fire, while the same, lying there, is being heated, he should perform the ritual described before commencing with the invocation of the God *Dharma* and ending with the offer of oblations, and while the ball is lying being heated the third time, he should address the fire in the (heated) iron ball by the following invocation:

“O Fire, thou art the four Vedas (themselves incarnate). and to thee are oblations offered in sacrifices. Thou art the mouth of

1. i. e. the gerundial वि in विष्य. Instead of the fuller clause “having seen my virtues &c.” the construction used is “from my virtues and sins.”

2. Ch. I. 289-290.

3. i. e. ordinary; as distinguished from special fires kindled on special occasions.

all gods, thou art (also) the mouth of the philosophers. Being in the abdomen of all beings, thou knowest all their good and bad deeds. Since thou purifiest the sins thou art called 'the purifier'. In the case of sins, O Fire, exhibit thyself *i.e.* appear in flames, O thou holy purifier ! while in the case of purity of the heart, be cool, O consumer of all oblations. O Fire thou movest in the hearts of all gods as a witness. O god, thou alone knowest those things which no human being knows. This mortal being accused at Law wishes to get himself cleared ; therefore it behoves thee to free him from this charge according to the sacred Law, *Dharma.*"

S'ûlapâni.**Yâjñavalkya, Verse 104.**

Thereafter, after heating the iron ball, this mantra one should repeat¹. "O you purifier, you wise," &c. all in the vocative case. (104).

Yâjñavalkya, Verse 105.

After he has addressed in that manner, he should place in both his hands a smooth ball of iron weighing fifty palas and red (heated) like fire.

Mitâks'harâ:—Moreover, *tasya, of him, i.e.* of the performer (of the ordeal) while thus *uktavataḥ*, addressing, *i.e.* while invoking with the *mantra*: "O fire thou pervadest the innermost parts of all beings &c." *lauham, the iron, i.e.* made of iron, *pindam, ball, panchâsatpalikam, weighing fifty palas, i.e.* of the quantity of fifty *palas, samam, round, having no angle i.e.* rounded and even on all sides and polished and eight fingers in length, *vide* the text of *Pitâmaha* : "After removing all angles and making it even, a ball of iron of eight fingers weighing fifty *palas* should be heated in the fire." *Agnivarnam, red like fire, i.e.* resembling fire ; *ubhayoyah hastayoyah, in both hands,* covered with the *as'wattha* leaves, *curds, the durwâ grass, and other things, nyaset, should place, i.e.* the chief judge should deposit.

1. This is an addition in the 3rd manuscript,

S'ūlapāni.

Yājñavalkya, Verse 105.

Made of fifty *palas*, an iron ball of eight fingers, made smooth without an angle and also along with the *mantra*, he should place in the hands of him—*i. e.* the performer of the ordeal. (105). 5

What then should be done? So the Author says

Yājñavalkya, Verse 106 (1).

He having taken it (into his hands) should walk through only seven circles slowly.

Mitāksharā :—Sa, he, *i. e.* the man, having taken the heated iron ball in the cavity of his hands, *sapta mandalāni sanaiḥ, vrajet, should walk seven circles slowly*. By the use of the term *eva*, only, the Author indicates that the foot-steps should be placed within the circles, and that he should not go beyond the enclosure, as says Pitāmaha, “He should not go out of the enclosure, nor should he put his foot inside (the rim).” 10
15

It has been said above that “he should walk through only seven circles slowly.” There a question may arise as to where are the measurements for one *mandala* each, and what should be the space intervening between two rounds? So the Author says 20

Yājñavalkya, Verse 106.

A *Mandala* or a round should be understood to be sixteen fingers (in diameter), and the same should be the space intervening (between two *mandalas* or circles). 25

Mitāksharā :—That (the length) of which is sixteen figures is a *shodasāṅgulakam, sixteen Angulas*. The circle should be understood to be of the dimension of sixteen Angulas. The *antaram, space intervening*, *i. e.* the distance between two circles is (to be) the same. 30

By saying however that he should walk through seven circles each of sixteen angulas, is meant to include the first circle in which he is standing and therefore, in all there would

be eight circles of sixteen fingers each, while other circles (than the one at the centre) would be seven of the same dimension. This very thing has been stated by Nārada¹ by the method of enumeration thus: “The interval between every two circles is ordained to measure thirty-two fingers or *angulas*. Thus the space covered by the eight circles will be a little more than two hundred and twenty four² by the measure of *angulas*”.

The meaning is this: The circle other than the first circle and at a distance of sixteen *angulas* is the second circle. Each circle being removed further on from the second and at a distance of thirtytwo *angulas* from the first circle, leaving a space of sixteen *angulas*. Thus seven circles should be gone round each having an intervening space of thirty-two *angulas*. Thus the space of ground intervening between the seven *mandalas* would be two hundred and twenty-four *angulas* in terms of *angulas*.

The suffix त्स् is used to indicate all inflexional cases. According to this view, after having made the central round of sixteen *angulas* in measurement, each one of the intervening spaces measuring thirty-two *angulas* and lying between the seven *mandalas* should be divided into two, and the ground of the intervening space should be fixed at sixteen *angulas*, seven *mandalas* should be created measuring twice sixteen *angulas* the breadth of each being according to the measure of the foot of the person who has to go round. As has been said by the same Author²: “A round should be made as broad as his foot.”

As to what has been said by Pitāmaha viz.: “Eight circles should be made, and also a ninth in the front” the first circle should be dedicated to the god *Agni* (fire), the second to (the god) *Varuna* (water), the third to the God *Wāyu* (wind), and the fourth to the God *Yama*; the fifth is consecrated to the God *Indra*, and the sixth is said to be for *Kubera*; the seventh is for the God *Soma*, and the eighth to the *Sun*, and the ninth is for all Gods. This is the practice known to all experts in ordeals.

1. Ch. I. 285, 286.

2. In the printed edition of Narada the reading is षट्पञ्चाशत् ‘fifty-six’; thus the total would be 256.

The interval of space between every two circles is ordained to be thirty-two angulas. Thus the space covered by the eight circles is supposed to measure two hundred and fifty-six angulas. A circle should be made as broad as the foot of the person performing the ordeal. The *kus'a* grass should be spread over all the circles as dictated by the *S'âstra.*" 5

There (the meaning is that) after making the ninth circle which is intended for all gods and which is unlimited by any measurement of angulas, the eight circles and the eight intervening spaces together cover a space of two hundred and fifty-six angulas. There also (the number of) circles (actually) to be walked through would be seven only. Since he stands in the first and throws down the ball in the ninth, and so there is no difference as to the measurement of angulas. "Eight slanting barleys or three rice-corns make one *Angula*, twelve *Angulas* make one *Vitasti*, two *Vitastis* make a *Hasta*, and four *Hastas* (make) one *Danda*. One thousand of these (i. e. *Dandas*) make one *Kos'a*, and four of these (i. e. *Kos'as*) make one *Yojana*." Thus should be understood (the table of measurement). 10 15

S'ūlapâni.

20

Yājñavalkya, Verse 106.

Here, the accused, taking hold of the iron ball should walk through the seven *Mandalas* (circles) made of cow-dung, more than seven. Each circle and the distance between each pair of *Mandalas*, shall be sixteen fingers. (106). 25

After having gone through the *seven* circles what should be done ? so the Author says

Yājñavalkya, Verse 107 (1.).

After he has thrown away the (ball of) fire and rubbed his hands with rice, if he is (found to be) unburnt, 30 he should obtain an acquittal.

Mitākṣhara:—Standing in the eighth circle and after throwing away in the ninth circle the iron ball heated with fire,

having pressed the rice corns with both his hands, if it is found that his hands remain unburnt, *s'uddhim āpnuyāt, he should obtain an acquittal.* It follows from this that if his hands be burnt he is considered to be guilty.

5 One, however, who through fright stumbles and is burnt elsewhere than on the hands, even then he is not
 * Page 67. considered as guilty. As says Kâtyâyana¹, "If while under a charge, one stumbles and is burnt elsewhere than at the proper spot, the Gods consider him as unburnt,
 10 and he should be awarded the entire claim."

Yâjñavalkya, Verse 107 (2).

If the ball falls down on the way, or in the case of a doubt, he should carry (it) again.

15 Mitâksharâ:—If while (he is) walking, the ball falls, *antarâ, on the way, i. e. even before the eighth circle is reached, or if sans'ayah, a doubt arises, as to whether he is burnt or unburnt, then, tadâ punrâharet, he should carry it again.* This is the rule laid down and as necessarily follows from the sense.

20 Here, however, the following is the order of procedure. On the previous day having performed the purification ceremony, the next day, the Chief Judge should mark the circles according to Sâstra, worship the presiding deities of the circles in their respective places, consecrate the sacred fire and complete the *S'anti* sacrifice, and then after causing the ceremony of the consecration of the hand, by the
 25 pressing of the rice corns &c. to be made, of the person performing the ordeal who had observed a fast, and who after having bathed was standing with wet garments in the western circle, and after tying on his forehead the leaf containing the charge by repeating the *Mantra*, the Chief Judge should invoke the God Fire when the ball
 30 is heated a third time, and lifting with a tong the heated iron ball which had been duly addressed (by the performer), he should place it in the hands of the person performing the ordeal. And this latter

1. Verse 441.

also if after walking through seven circles and throwing down the ball in the ninth remains unburnt, then he is declared innocent.

Here ends the Ordeal by Fire.

Viramitrodaya.

Now the Author states the procedure for the ordeal by fire, 5 reached in due course

Yājñavalkya, Verses 103, 104, 105, 106, 107.

Tato, ‘thereafter’, i. e., after the process stated in the general rules of procedure for the ordeals, and the invocation of the God Dharma &c. *vimṛdita*, ‘rubbed’, i. e., crushed, *vrikhayo*, ‘paddy’, by which—of this description the two hands—; *lakṣhayitwā*, ‘marking’ the Chief Judge in the palms of the hands joined together, seven white *pipal* leaves should be taken; *vide* the text of Nārada: “Should encircle the white hands with seven fibres of thread”. Here, “Having placed the *sami* leaves, *akṣhatā* grains and also the *durwas*, these should be deposited in the leaves” has been mentioned as a special rule in another Smṛti.

Nārada¹: “In all cavities in the hand one should make the previous marks; and these should again be examined and dotted with spots; thereafter, the seven leaves one should encircle with seven thread strings.”

Thereafter, while repeating the verse, “O fire &c.”, he (the Chief Judge) should place on the hands of the person performing the ordeal—and by the use of the word *api*, ‘even’, on the *pipal* leaves lying theron—the iron ball weighing fifty *palas* and coloured red-hot as fire.

The meaning of the *mantra* is: “O Fire, *pāvana*, ‘the purifier’, i. e., the purifying cause; *Kave*, ‘Omniscient’, i. e., all-knowing; *sarvabhartanām*, ‘of all created beings’, i. e., of all sentient beings; *antah*, ‘in the innermost’, i. e., inside; *charasi*, ‘pervadest’, i. e., move about for the purification of food, drink &c. In the expression *punyapāpebhyaḥ* the ablative case is by the elision of the gerundial termination—the meaning is—after having examined the merits and the sins, like a witness declare the truth about me.

In this connection is a Smṛti²: “An iron ball red hot like fire, sparkling and well marked, weighing fifty palas, having purified it again and again, by heating, the Brāhmaṇa at the third time while it is burning,

1. Ch. I. 301.

2. See Nārada I. 289 &c.

should address it premised by truth as follows: "Listen to this law of men, which has been presided over by the guardian deities of the world. Thou, O Fire, live within the inside of all beings; like a witness, you alone, O Fire, know things which men do not know.
 5 This man accused in a court of law desires exhortation; therefore be pleased to relieve him from this suspicion according to Dharma."

The person performing the ordeal, having taken up the iron ball should slowly walk through the seven circles. By the use of the word *eva*, 'only', is indicated the stepping of one foot in the circles and the
 10 non-transgression of the circle; as says Pitāmaha: "Never should he step beyond the circle; he should place his foot inside; having gone to the eighth *Mandala*, the wise should throw it in the ninth".

A *Mandala*, 'circle', moreover, should each be known to be sixteen fingers in measurement, and should have an intervening space of
 15 sixteen fingers between each.

Now, if after reaching the eighth *Mandala*, and standing there, after throwing it in the ninth *Mandala*, and even after rubbing the paddy if he be *adagdhah*, 'is unburnt', then he should get *śuddhi*, 'acquittal, i. e. success in the point at issue. If, however, even before the eighth circle
 20 (is reached) the iron ball drops down, or there be a doubt whether he was burnt or not burnt, then again also according to the procedure stated before, he should carry the iron ball in his hands.

Thus, this is the order here: "On the previous day after having observed a fast and taken his residence, the performer of the ordeal, on
 25 the next day, having invoked the God Dharma with the *mantra*, 'Come, come, Oh revered Dharma', having placed on his hand the document, through the nine circles each of the dimension of sixteen fingers and each having an intervening space of sixteen fingers, and marked with rice flour or the like, while standing in the first circle, after the hands
 30 were examined and the places of scars having been marked with red dye, when the iron-balls are heated three times, and after he was addressed by the Chief Judge with the words, "Hear this law prepared for men &c."," after having placed seven pipal leaves on the palms, and encircling it with seven white threads together with the
 35 pipal leaves, barley, *durvas*, and *śami* leaves, and having placed thereon the red hot iron ball, after having in order passed through the other six circles, while standing in the eighth, should throw the iron in the ninth. Thereafter after the paddy grains were crushed by the hands, when he is found to be unscathed, he should be declared as

innocent. Even if burnt in any limb other than the hands, still he should be (regarded as) innocent. (108-107).

S'ūlapāṇi.

Yājñavalkya, Verse 107.

Under the text of the Kālikā Purāṇa, viz.: "After having gone round he should throw it in the grass", having thrown the red-hot iron ball in a heap of grass, after crushing the paddy grains, if he remain unburnt, he gets exhortation. A special rule is stated by Pitāmaha : "Then in his hands should be placed paddy grains or barley ; and when after these being rubbed in the hands unhesitatingly, he remains without any injury to the end of the day, he should get an acquittal". If it falls in the interval of the seven circles, or is burnt, or if there be a doubt, he should have the fire again". Kātyāyana¹ : "If the accused falters, or is otherwise burnt ; the Gods do not consider him as burnt ; to him, it should be offered again". (107). 5

Thus ends the Ordeal by fire. 15

Now the Author states the ordeal by Water

Yājñavalkya, Verse 108.

"Protect me thou for (the sake of) truth, O Varuṇa" thus having invoked (the God of) water, one should enter 20 the water navel-deep catching hold of the thighs of one who was standing in the water.

Mitākṣharā :—Varuṇa satyena māmabhikṣha twam, 'O Varuṇa thou shouldest protect me for (the sake of) truth', by this mantra having abhisāpya, invoked, i. e. addressed, kam, i. e. 25 water, catching hold of the thighs of nābhidadhnodakasthasya, one who was standing in the water navel-deep, i. e. of a man who was standing in water to the level of his navel, the person wishing for purification, jalām pravis'et, should enter the water, i. e. should immerse himself in water. 30

This, however, (should be done) after the worship of the God Varuṇa has been finished; vide the text of Nārada: "He should first offer worship to the God Varuṇa with concentration by means of

1. Verse 441.

fragrant besmearings, and flowers, and by means of honey, milk, ghee &c." Similarly after the general procedure is observed i. e. that beginning with the invocation of *Dharma*, and ending with the worship of all the deites, the performance of the sacrificee, and 5 the placing on the head of the document containing the plaint. For, after the Chief Judge has addressed the water *viz*: "O water, thou art the life of all sentient beings, wert created before the creation ; thou hast been mentioned as the means of the purification of things as well as of corporate beings, 10 hence, O discriminator of the auspicious from the inauspicious, thou shouldest exhibit thyself", the person wishing for an ordeal should then invoke Varuña with the *mantra* "O Varuña protect me for truth &c." The places for water, have, moreover been mentioned by Nârada¹ "In streams which have a smooth current, in oceans in 15 rivers, in lakes, in ponds, in tanks and in pools".

So also (has been said) by Pitâmaha: "He should plunge in water which is steady, and not (that) in which are crocodiles, nor which is shallow, that which is devoid of grass or moss, and which is free from leeches and the fish ; he should make the purification in water which is 20 in the holy ponds. One should always avoid the water which has been brought, as also the water in swiftly flowing rivers. He should always enter such water as is free from waves and mud." *Brought*, i. e. water brought from tanks & and stored in copper pans.

The man standing in the water navel-deep should be firm, grasp 25 a consecrated pillar made of the holy tree and stand with his face towards the east; *Vide* the text²: "He should stand in water with his face towards the east and grasping the sacred post."

S'ûlapâni.

Now the Author states the ordeal of water

"O Varuña, 'protect me by the truth,' thus having caused the oath to be taken in regard to the water to be drunk, and by catching hold of the thighs of another man, either a Brâhmaṇa, Kshatriya, or a Vaisya, who was

1. Ch. I, 305,

2. Nârada I, 308.

standing in water to the depth of his navel, he should immerse in steady water. Pitâmaha : "The wise man should cause a circle to be made, and should devoutly honour it, and the arrows with flowers and incense, as also the bamboo bow." (108).

What should be done then ? So the Author proceeds

5

Yâjñavalkya, Verse 109,

When another swift runner brings back the arrow discharged simultaneously (with the immersion) and if he sees him with his (entire) body immersed in water, he obtains an acquittal.

10

Mitâksharâ :—When, samakâlam, simultaneously, with the immersion (of the defendant) one swift runner had gone, anyâ javi, another swift runner, standing at the place where the arrow had fallen, brings back the arrow first discharged, and if he sees him (i. e. the person performing the ordeal) nimagnângam, his body (still) immergeed in water, then he is declared innocent.

15

This is the substance of what is (meant to be) said :—After three arrows are discharged one man endowed with a velocity goes to the place where the middle arrow has fallen, and taking it up stands there also. Another runner, also swift, stands at the place from where the arrows are discharged, i.e. at the bottom of the arch. When the two are thus stationed, the person performing the ordeal immerses into the water at the third clap of the hand (of the Chief Judge.) And even simultaneously with this the man standing at the base of the arch

20

goes swiftly to the place where the middle arrow

25

* Page 68. had fallen, and immediately after his arrival there, the one standing with the arrow held in his hand swiftly going to the base of the arch, if he does not see him (i. e. the performer of the ordeal) on account of his being immersed in water, then he is declared innocent.

30

This very thing has been made clear by Pitâmaha : "The running and the immersion (respectively) of the runner and of the performer of the ordeal should be simultaneous. A swift runner should go from the base of the arch to the spot where the arrow has fallen. Immediately after his arrival there, the second also quickly

35

taking up the arrow should go to the base of the arch from where the first man started. If the one with the arrow in his hand, on his arrival (at the base of the arch) does not find him, because he was completely immersed under water, then he, i. e. the Chief Judge,
5 should declare his innocence.”

Nârada, moreover, has laid down the rule for determining the swift runners thus: “Those two men who would stand first in running among fifty runners should be appointed for the purpose of bringing back the arrow.” The arch also should be erected on a level
10 ground near the place of immersion, and equal to a height as far as the ear of the person performing the ordeal. *Vide* the text of Nârada: “Having reached the place near the water an arch as high as the height (of the performer) upto the ear should be erected on a level ground”.

15 The three arrows as also the bow made of bamboo should first be worshipped with auspicious things such as white flowers &c. *vide* the text of Pitâmaha, “First the arrows he should worship, as also the bow made of bamboo by means of auspicious articles such as smelling odours, flowers &c. and then should he begin the
20 performance.”

The measurement of the bow as also the place of the target have been mentioned by Nârada¹: “A strong bow is declared to be 107² (angulas) long, a moderate bow 106, and an inferior bow 105 (angulas). This is declared to be the rule regarding the bow. With
25 the moderate bow a wise man should discharge three arrows having fixed the target at a distance of 150 hastas; if arrows are thrown at a less or a greater distance there would be a flaw.” A hundred and seven (107) means one hundred and seven of angulas; this is a strong bow. Similarly, also, about 106 and 105 (respectively). Thus
30 the dimension of a strong bow has been mentioned to be eleven angulas in excess of four hastas, of a moderate bow, ten angulas, and of an inferior bow, nine angulas.

1. Oh. I. 307.

2 It may also mean 700, 600 and 500 Angulas respectively, the original words being सप्तशतम्, पद्धतम् and पञ्चशतम्. The *Mitâksharâ* interprets these as a hundred plus seven, hundred plus six, and hundred plus five.

The arrows, moreover, should be made of bamboo without an iron; *vide* the text¹: "For the purification, arrows should be prepared of the bamboo tree without any iron at the end, and the person discharging it should discharge forcefully". The person for discharging the arrow to be appointed, should be a Kshatriya or a Brāhmaṇa living like Kshatriya, and one who has observed a fast as has been said²: "The person to discharge (the arrow) has been laid down to be a Kshatriya, or a Brāhmaṇa living like him. He should not have any cruel thoughts in his mind, must be calm and must have observed a fast, and then should discharge (the arrow)." 10

Of the three arrows when discharged, the middle one should be taken, since it has been so laid down in the *Sāstra*; *vide* the text³: "The middle-most arrow, however, should be taken up by a strong man." There also, the arrow should be brought from the place where it falls, not to where it moves on; *vide* the text: "The place where the arrow falls should be considered, while the spot where it moves should be avoided, since an arrow may go a long distance by moving and moving." The arrow, moreover, should not be discharged when the wind is blowing violently, nor on a ground which is uneven &c; *vide* the text of Pitāmaha: "A learned man should not discharge the arrow when the wind is blowing violently, nor on a spot which is uneven, is covered by trees, or is covered by grass, bush, creepers, plants, mud, or stones."

By saying that "if he sees him with his entire body immersed in water he obtains an acquittal", the guilt has been declared of one whose body is seen above water. Where the person moves to another place a guilt has also been declared by Pitāmaha thus: "Otherwise there shall be no acquittal if even one limb is seen" (also) "Or by his going to a place other than that where first he was made to enter." The expression "if even one limb is seen" is used in reference to the ear &c. as there is a special text⁴ viz: "He (the judge) may declare him also as innocent if after immersing into the water his head alone is seen, and not the ears, nor the nose."

1. Of Kātyāyana, Verse, 442.

2. By Pitāmaha.

3. Of Nārada; Ch. I. 310.

4. Also of Pitāmaha.

The order of procedure here is this: Near the store of water as characterized above, having set up an arch of the description given before, and having fixed the target at a place and at a distance as stated, having properly worshipped the bow together with the arrows near the arch and invoked Varuna in the store of water, and offered worship to him, having moreover, on the bank (of the water) offered oblations to Dharma and other gods at the end of a sacrifice, the Chief Judge should tie the document containing the complaint on the forehead of the person wishing to perform the ordeal and thus address the water with the *mantra*. “O Water thou art the life of living beings &c.” Then the person performing * Page 69. the ordeal having invoked the water with the *mantra*, “(protect me) by the truth &c.” should go near the strong man who has grasped firmly the pillar and who is standing in water navel-deep. Then, after three arrows are discharged, and after one swift runner has taken his stand at the spot where the middle arrow falls, holding in his hand the middle arrow, and another has stood at the base of the arch and when after this the Chief Judge has given three claps, the running, immersing, and bringing back the arrow should simultaneously take place.

Thus ends the Ordeal by Water.

Viramitrodaya.

Now the Author states the procedure for the ordeal of water, reached in due course

O Varuna, *satyena*, ‘for truth’, *twam*, ‘you’, *mā*, ‘me’, i. e., myself, *abhiraksha*, ‘protect’. Thus having, *abhipragāya*, ‘loudly addressed’ i. e., invoked ‘water’, *kam*. In some places such itself is the reading¹. *Nābhidadhnam*, ‘navel deep’ i. e., measuring as far as the navel, of one standing there i. e., of a man, catching hold of the thigh, *ialam viśet*, ‘one should enter the water’, i. e., should get immersed into water, the performer of the ordeal. At that time while one with a swift pace has started, another man with a swift pace who was standing at the place from which the arrow was discharged, when he brings back the

1. The several readings are अभिशाप्य, अभिप्रगाय.

arrow and has seen the performer of the ordeal with his body immersed, then he gets an acquittal.

This is what is intended to be said: At the immersion time when an arrow had been discharged and a swift runner had gone to bring it, another arrow immediately discharged thereafter another swift runner brings back, and if at that time he sees him immersed, then he becomes exonerated. Here, this is the procedure: "At the outset one should concentrate and offer worship to Waruna with sandal paste, fragrant flowers and with sweet milk, ghee &c.," so says Nārada. Thereafter, after observing the procedure as stated before viz. from the invocation to the placing of the document on the head, the Chief Judge should address the (God of) Water thus: "Oh Water, thou art moving in the innermost recesses of all created beings, and being a witness, you alone, O Water, know those things which mortals do not know. Being accused in a judicial proceeding this mortal is immersing in you, therefore be pleased to free him from this suspicion according to law." Then the performer of the ordeal should offer a prayer to the Water thus. "O Waruna, protect me for truth &c." Thereafter, in the still water when another man has entered into it, and with his face towards the East was standing still at a navel-deep spot, the Chief Judge should offer worship to the bow together with the arrows placed near an arch high upto the ear's height and erected near the place of immersion: Then a Brāhmaṇa or a Kṣatriya who has observed a fast, discharges three arrows. When, catching hold of the thigh of the man standing in the water, the performer of the ordeal takes a plunge into the water, that is one period. There one strong man with a swift pace takes the first arrow, and a similar one, another taking up the middle arrow sees the performer of the ordeal still immersed. Here Pitāmaha: "Otherwise he shall not be declared to be innocent if even one limb is seen; or if he is seen to have gone to another place where first he was made to enter." (108-109).

S'ūlapāṇi.

Yājñavalkya, Verse 109.

Synchronously with the discharge of the arrow when a very swift runner has gone to bring back the arrow, when he is gone, another man equally swift in pace taking up the middle arrow and when he comes back and sees the performer of the ordeal still immersed with his limbs in water, then the king should declare his innocence. Brhaspati: "Taking up the middle arrow, another man of the same calibre, returns to the

place from where the (first) man had gone, and on arrival if he does not see the man who is immersed into the water below, then his innocence should be declared, otherwise he will not be considered as innocent, even if one limb is seen."

5 Pitāmaha : "The person to discharge (the arrow) to be selected should be a *Kṣatriya*, pure in character, or even a Brāhmaṇa ; one with a not unkind heart, quiet, and who has observed a fast and has kept himself pure." (109).

Thus ends the Ordeal by Water.

10 Now the Author describes the Ordeal by Poison

Yājñavalkya, Verses 110, 111.

"O Poison thou art the son of Brahman. Thou art established in truth and virtue ; clear me from this charge. Out of (regard for) truth, be like ambrosia to me." (110).

15 Having addressed thus, he should swallow the poison called S'arṅga (or ginger) produced on the Himalaya mountains ; of him by whom the poison becomes digested without convulsions (The Chief Judge) should declare the innocence (111).

20 Mitāksharā :—With the *mantra*, *Twam vishetyādi*, "O poison &c." having addressed the poison, the person performing the ordeal should, *bhakshayet swallow*, *wisham himasailajam*, *poison produced on the Himalaya mountain*, i. e. produced on the mountain peaks. And when such a poison when swallowed by a man
25 is digested, *vegairvinā*, *without convulsions*, such a one is declared innocent.

Convulsions from poison occur by the transmission of one humour¹ of the body with another ; *vide* the text² : "The transmission of a humour of the body into another is known as the

1. धूत्—A humour of the body. According to the principles of Aryan Medicine the principal humours which regulate the condition of the body are वात, (wind), पित्त (biles) & कफ (phlegm). A disturbance in the normal condition of any of these causes all the diseases of the body.

2. Of Pitāmaha,

convulsion of poison.” The humours, moreover, are seven¹ viz. “The skin, blood, flesh, fat, bones, the marrow, and the semen”. Thus the convulsions of poison would be seven also. The characteristics of these have, moreover, been mentioned in the treatise on poison *Vishatantra* thus : “The first convulsion from poison brings on a horripilation, and the one next to it (cause) perspiration and the dryness of the mouth ; the two next following cause in the body the change of colour and violent tremour. That which is (called) the fifth convulsion brings on syncope, chocking of the throat, and the hiccough ; the sixth (creates) fast breathing and coma, and the seventh causes the death of the consumer (thereof).”

Here, moreover, the worship should be offered to the God Mahâdeva, as says Nârada : “One who has observed a fast should administer (the ordeal of) poison in the presence of gods and the Brâhmaṇas, after having worshipped (the God) Mahes’wara by means of fragrant scents, codiments, and with *mantras*. ” The Chief Judge after having observed a fast, should worship the deity Mahâdeva, and placing the poison before it, should offer worship to Dharma and others, terminating with a sacrifice, and thereafter having placed the document bearing the complaint on the head of the person performing the ordeal should thus invoke the poison:—viz. :—“O poison thou hast been created by Brâhmaṇ for testing the wicked, (therefore O) expose the soul of the sinners, while be like ambrosia to the pure-minded. O poison thou who art Death incarnate, thou hast been created by Brahmaṇ, free this man from this (charge of a) sin and become nectar to him by (regard to his) truth.”

Having thus invoked, he should give it to one who is standing with his face turned towards the south ; *vide* the text of Nârada : “To one who is standing with his face towards the South, and also in the presence of the twice-born, with his face turned towards the North, or the East, and with concentrated mind he should administer the poison.”

The poison, moreover, to be taken should be the *Vatsanâbha* poison or the like; *vide* the text of Pitâmaha : “Of the *vatsanâbha* from the mountain heat or of a poison produced on the Himalayas.”

1. These are त्वक्, अस्त्रक्, मांस, भेद, अस्थि, मज्जा & शुक्र.

The poisons to be discarded have similarly been laid down : "Distilled poisons, as also poisons which are old, or are artificially prepared, and those produced from the earth—all these poisons should be entirely excluded". Also by Nārada¹ : "Purified poison, as well as poison which has been distilled, similarly, scented and mixed poison, as also the Kālakūta and the Alābu poison, should be carefully avoided."

The time also has been mentioned by Nārada² : "Having weighed the poison which is intended (to be given), it should be administered at a time when the winter has set in. A man knowing 10 the Dharma must not administer it) in the afternoon, nor in the twilight." In any other period, however, a less quantity than that laid down as the standard, should be given, *vide* the text³ : "Four yavas should be given in the rainy season, and it has been laid down that five yavas should be given in the Grīshma. In the Hemanta it 15 should be seven yavas, and in the S'arad even less than that". By less is meant six yavas. By the mention of Hemanta, S'is'ira also is included ; *vide* the S'rūti text *viz.* : "By the combination of Hemanta and S'is'ira."

Since Vasanta has been regarded as a period common for 20 (the administration of) all ordeals generally, seven * Page 70. should be given during that season, and the poison also should be given after it is covered with clarified butter; *vide* the text of Nārada⁴ : "Let him give to the person performing the ordeal, one-eighth less than twentieth 25 part of a sixth part of a Pala of the poison, mixed with clarified butter." A Pala here, moreover, is equivalent to four gold coins. Its sixth part would be ten Māsha and fifteen Yavas. Three yavas make one Krishnala, and fifteen Krishnalaks make one Māsha ; thus fifteen yavas make one Māsha.⁵. In this way the (number of) yavas 30 in ten Māshas would be one hundred and fifty, and this together with the ten yavas mentioned above make up (the total of) 160 yavas—

1. Ch. I. 321. मृग्. Another reading is व्रग्—spoiled poison.

2. Ch. I. 319 and 320.

3. Nārada Ch. I. 324.

4. Ch. I. 323.

5. दशानां is a better reading. पञ्च दशानां appears to be wrong.

this is the sixth part of a Pala. A twentieth part from this would be 8 yavas. A twentieth part less by one-eighth of this i. e. less by one yava i. e. seven yavas he should give mixed with clarified butter. The clarified butter should moreover be taken thirty times the (quantity of) poison, *vide* the text of Kātyāna¹: "The poison should be administered to men² in the forenoon and in a cool place; it should be pounded and smooth, and should be mixed with clarified butter thirty times the quantity (of the poison)" i. e. the poison (should be) mixed with clarified butter thirty times its quantity.

5

The person performing the ordeal should, moreover, be protected from sorcerers &c.; *vide* the text of Pitāmaha viz.: "The king should protect the person about to perform the ordeal from the danger of sorcerers &c. by guarding him with his own men for three or five days. He should also examine and see if there are hidden on his body any medicines, or spells, or any jewels which are effective as antidotes against poison, as also those secretly produced." Similarly the poison should also be guarded. *Vide* the text of Nārada³: "Poison from the mountain peak which is obtained from the Himalayas, is the best as ordained; such as has the colour, flavour, and taste, which is unartificial, not tempered, and which is not over-powered by any charms."

10

15

20

25

30

Similarly after the poison has been swallowed he should be watched for (an interval of) 500 claps of the hands, and thereafter should be examined, as says Nārada: "If after an interval of 500 claps of the hands he remains free from any effect (of the poison), then he is considered to be innocent; thereafter he should be examined". The interval of time however stated by Pitāmaha i. e. till the end of the day, has a reference to a small quantity of poison. "After swallowing it if he remains steady and without a swoon, and does not vomit and otherwise remains free from any effect till the end of the day, he should then be declared as innocent." Here also the procedure is as follows; the Chief Judge after having observed a fast and worshipped the God Mahādeva should place the poison before it, and after having offered a sacrifice to Dharma and other deities,

2. देहिनाम् Lit: corporate beings.

1. Verse, 450.

3. Oh. I 322.

and placed the document containing the complaint on the head of the person wishing to perform the ordeal, should address the poison and offer it to him who is seated with his face turned towards the South ; the person performing the ordeal too should take the poison after addressing it.

5 Here ends the Ordeal by Poison.

— — —
Viramitrodaya.

Now the Author states the ordeal by Poison

Yājñavalkya, Verses 110, 111.

10 “O Poison &c.”, with this verse having addressed the poison, one should eat. He, moreover, by whom it becomes digested without convulsions, of him the Chief Judge should declare the innocence. The *S'ārṅga* or ginger poison is well known as *singhia*, as has been said : “Having the luster of a goat's horn, blue in colour, and produced on the 15 Himālaya mountain, pure, having the luster of ginger, of a fine yellow colour, and unsurpassed.”

“The transmission of a humour of the body into another is known as the conclusion of poison.” Its characteristic is, horripilation, swoon, &c. An ordeal of that.

20 The procedure here is this: The Chief Judge having observed a fast, and worshipped Mahādeva, and having placed before Him the poison, having performed the worship of Dharma terminating with the sacrificial oblations, placing the document of declaration on the head of the performer of the ordeal should thus address the poison with this 25 *mantra*: “O poison, thou hast been created by Brāhmaṇa for testing the wicked ; (therefore) expose the soul of the sinners, while be like ambrosia to the pure-minded. O poison, thou art Death incarnate, thou hast been created by Brāhmaṇa ; free this man from this (charge of a) sin, and become nectar to hand by (regard to his) truth.” Thereafter to 30 the performer of the ordeal with his face turned towards the South, himself with face to the North or the East, in the presence of the Brāhmaṇas, he should give refined powdered poison mixed in clarified butter. By regard to particular seasons, particular proportions also have been mentioned in this connection by Nārada¹: “Having weighed 35 the poison which is intended (to be given), it should be administered at

1. Ch. I. 319-320.

a time when the winter has set in ; not in the afternoon nor in the noon, nor even in the twilight, should one knowing the Dharma (administer it). In the rainy season, the measure is four yavas, and five yavas have been stated to be in the Grishma ; in the Hemanta, it is seven yavas, and in the Sarad, even less than that". 'Less', i.e. six yavas. Thereafter, the performer of the ordeal having addressed with the verse "O poison, thou &c." should consume it. (110-111). 5

Here ends the Ordeal by Poison.

S'ûlapâni.

The Author states the ordeal by Poison.

10

Yâjñavalkya, Verses 110, 111.

'*Sârngam*', i.e., "Having the lustre of a goat's horn, blue, and produced on the Himâlaya mountain, and in the effect having the lustre of ginger, extremely cooling and unsurpassed". Having taken in the hand such poison, and addressed with the verse "O poison. &c.", and consumed in the stated quantity, one in whose case it becomes digested without any convulsion, swoon, &c., that man shall be (declared to be) innocent. In some books, the following verse is stated as to be repeated (by him), "O poison thou art the son of Brâhma, established in the laws of truth; pray free me from this accusation, and by the (force of) truth be ambrosia to me." (110, 111). 15 20

Thus ends the Ordeal by Poison.

Now the Author describes the Ordeal by *Kos'a*

Yâjñavalkya, Verse 112.

Having worshipped the stern deities, he should collect the water in which they were bathed. Then after reciting (the formula), he should make the person drink therefrom three handfuls of water. 25

Mitâksharâ:—*Ugrân Devân, stern dities, i. e. such as Durgâ, Âditya &c; samabhyarchya, having worshipped, i. e. 30 worshipped with the sandal-paste, flowers &c. and after having bathed tat-snânodakmâharet, he should collect the water in which they were bathed.* After collecting it, the chief Justice should address it with the *mantra*. "Oh water, thou art the life of all sentient beings &c.", and putting that water into another vessel he should *pâyayet* 35

5 *prasrtitrayam, cause three handfuls of the water to be drunk,* by the person performing the ordeal after the repetition of the *mantra*, "O Waruna protect me for the truth &c." This, moreover, should be done after the general procedure *viz.* the invocation of Dharma, the worshiping of all deities, the offering of the sacrifice, and the placing (on the head) of the document containing the complaint &c. has been observed.

10 Here also, the rule as to the deity to be bathed, the rule as to the procedure, as also the rule as to who is entitled to this ordeal have been stated by Pitâmaha thus: "Of that deity whose devotee he is, the water should be caused to be drunk by him. In the case of an equal regard for all the deities, the water of Aditya should be given to be drunk. The water of Durgâ should be given for drinking to the thieves, as also to those who make a living upon their weapons. In the case of Durgâ the trident should be bathed, while of A'ditya, the circle should be bathed, so also the weapons of other Deities too should be bathed." This is the rule about the *deities*.

20 The rule as to the *procedure* is: "In cases of trust, in all cases of suspicion, and also in a compromise—in these the *Kos'a* should be administered, always for the purification of the mind".

"The drinking of the *Kos'a* water is ordained in the forenoon for one who has observed a fast, has bathed, and has a wet cloth on, who is a believer, and who is free from vices." *Sas'uka* is a believer. "The

25 wise should not offer the *Kos'a* to the drunkard, to the, voluptuous as also to the rogues, and to those who are unbelievers¹. The drinking of *Kos'a* should be avoided in the case of great criminals, irreligious or ungrateful men, eunuchs, low Brâhmaṇas, unbelievers, Vrâtyas and slaves." *Mahâparâdha* means a great crime. *Irreligious i. e.* who does not observe the duties laid down for the Varnas in the several stages *i. e.* who is an atheist. *Lowborn i. e.* born of a Pratiloma union. *Slaves i. e.* fishermen. This is the rule as to the capacity of persons.

35 Moreover, after preparing a circle with the cow-dung, the person wishing to perform the ordeal should be seated facing the Sun, and

1. Nârada I 332.

then he should be made to drink. This is the rule to be deduced from the text of Nārada.: “Having called him who has been accused, and made him seated in the centre of a circle, and with his face towards the Sun, he should be made to drink three handfuls.”

It may be asked, in the case of ordeals beginning with the balance and ending with the poison the decision as to the innocence or guilt is immediate, what however in the case of *kos'a*? so the Author says

Yājñavalkya, Verse 113.

He on whom no calamity falls either by the act of the King, or of God within fourteen days, is innocent (and) there is no doubt.

Mitakṣharā :—*Chaturdas'adannhah*, before fourteen days, *yasya*, on whom, *rājikam*, by the act of the king, i. e. by reason of the king, (or) *daivikam*, by the act of God, i. e. caused by God, *vyasanam*, calamity, i. e. trouble, *ghoram*, dire, i. e. great; no, is not, i. e. certainly never, *jāyate*, falls, a minor one being unavoidable in the case of corporate beings—*Sa s'uddhah*, he should be considered to be *innocent*.

If it fall after the interval there is no blame. As says Nārada¹: “If a great misfortune even should befall him after the lapse of a fortnight, he must not be harassed by any one, since the fixed period has elapsed.” This text is self-apparent. The rule “within fourteen days” is with reference to serious charges, since it comes to be mentioned after the prefatory observation. “These in the case of serious charges². ” The other intervals mentioned by Pitāmaha, have a reference to petty charges; *vide* the text: “The *kos'a* may be administered even in a petty case.” These are (as mentioned in the text³): “He in whose case a misfortune is seen

1. Oh. I 331.

2. See above yajn. Ver. 95 Text p. 57. l. 25. Eng. Tr. p. 909.

3. Of Pitāmaha,

within three, seven, twelve or fourteen days, is considered to be guilty.” These three intervals of time have to be adjusted by dividing the amount at stake which is less than the amount of a serious charge, and by allotting the periods of three days &c. to 5 each portion respectively.

Thus ends the Ordeal of *kos'a*.

Viramitrodaya.

Now the Author states the ordeal of the *Kośa*

Yājñavalkya, Verse 112, 113.

10 Having offered worship to the stern Deities, the Chief Judge should take up the bath-water of the Deity. The sternness, moreover, has been expounded by Pitāmaha thus : “Of that Deity, whose devotee he is, the water of it should be caused to be drunk by him. In the case of an equal regard for all the deities, the water of Āditya should 15 be caused to be drunk. In the case of Durgā, the trident should be bathed, while of Āditya, the circular halo ; in the case of other deities, the weapons should be bathed”.

20 *Tasmāt*, ‘from it’, i. e. from the bath-water, *prasṛtitrayam*, ‘three handfuls’ of water having made to trickle¹, he should be made to drink. Of one who has drunk the water no calamity from the king or fate, or any other difficulty such as a dangerous disease of a malignant type for an interval of fourteen days, *sā śudhah*, ‘he is declared innocent’ i. e. becomes successful. The meaning is that on an absence of a calamity within the time limit, no suspicion can stand. 25 By the use of the word *tu*, ‘however’, is excluded the mixture of any other water. “He, in whose case a misfortune is seen within three nights, or seven nights, or twelve days, is declared to be guilty,” this text of Pitāmaha has reference to accusations of a faulty or very faulty character ; thus there is no contradiction.

30 Here, moreover, this is the Procedure : Having prepared a circle with the cow-dung, and having placed the performer of the ordeal with his face towards the Sun, and performing the ritual ending with the placing of the document on the head, and after offering worship to the stern deities, from their bath-water taking three handfuls of water and having

1. संन्नाद्य. This is the reading in *Viramitrodaya*. The *Mitākṣharā* reads संप्राद्य,

addressed it: "O Water thou art.....of the sentient beings &c."..... "O Varuna, protect me by truth", he (the Chief Judge) should cause the performer of the ordeal to drink. (112-113).

Thus ends the ordeal of *Kośa*.

S'ūlapāṇi.

Now the Author states the ordeal of *Kośa* 5

Yājñavalkya, Verse 112.

Having respectfully offered worship to stern deities, and having brought their bath-water, and after repeating the offence charged against himself, with face turned towards them, he should take three handfulls of the water. Pitāmaha states a special rule: "Of that deity of whom the particular man is a devotee, he should be made to drink the water. In the absence of any particular deity, he should be made to drink the water of Āditya. Within fourteen days' interval if no dire calamity from the king or fate occur to him, he should be declared to be innocent without doubt." 'Calamity,' i.e. an accident 'Dire,' i.e. causing extreme pain. The rest is plain Pitāmaha: "If within three nights, or within seven nights, or within twice seven days, any misfortune is seen to occur to a man, such a one is a sinner." Kātyāyana¹: "If a calamity due to fate occurs within three weeks, the accused should be compelled to pay the amount, and also a fine. Not of himself only, but if it occurs to his relatives, such as a disease, fire, death of a kinsman, he should be compelled to pay the amount and a penalty. A wasting disease, diarrhoea, eruptions, pain in the palate and joints, eye disease, throat disease, and the colic pains are regarded as divine calamities for men." 10 15 20 25

Thus ends the ordeal by *Kośa*.

OTHER ORDEALS.

The five principal ordeals beginning with the Balance and ending with the *Kośa*, have been expounded as proposed by the Lord of the Yogis. 30

Other ordeals have been mentioned in another Smṛti having a reference to petty complaints, as says Rice. Pitāmaha²: "Now I proclaim the rule regarding the grains of rice which have to be chewed (by the party). This rice ordeal should be administered in 35

1. Verses 456-458.

2. cf. Also Nārada Ch. I, 337-342.

cases of larceny, but on no other occasion whatsoever ; this is certain. Let the judge who must have cleansed himself previously, use white grains of rice, and not of any other (corn), and let him place the same in an earthen vessel in the sight of the Sun. After having 5 mixed them with water used for the bath (of the image of the Sun), he shall cause it to remain there. (In the next morning) one who has observed a fast and has bathed, on whose head the document containing the complaint has been placed, and who is seated facing towards the East, should be asked to chew the rice-grains and then 10 to spit (the same) on a leaf of the holy fig tree and of none else, and when that is not available then on a leaf of a birch tree. He whose blood issues forth, or whose chin or palate becomes rotten, or the limbs shake, must be pronounced guilty.”

15 The Chief Judge should cause one on whose head the document containing the complaint has been placed to chew the rice grains and to spit.

The form “having caused to chew” is gerundial. The general procedure which is common to all ordeals viz. the invocation of Dharma &c. should be followed here also.

20 Thus ends the Ordeal of Rice.

The ordeal of the heated *Mâsha* has been described by Pitâmaha thus : “A circular pot measuring Heated Mâsha sixteen angulas with a depth of four angulas should be made either of gold, silver, copper, or 25 of earth, of circular size. And the same should be filled with clarified butter or oil weighing twenty palas, and then when this is heated well, a gold *mâsha* should be thrown into it. He (*i. e.* the person performing the ordeal) should raise the heated *mâsha* by means of the forefinger and one or two fingers near it. He who 30 does not shake his fingers, or on whom no boil is produced, is deemed under the law to be innocent since his hand and fingers were unaffected. By the expression “should raise” is meant simply picking up from the vessel and not “throwing out”.

Page 72.

Another process :—"The Judge after having cleansed himself, should throw clarified butter of the cow into a golden, silver, copper, iron, or earthen vessel, and should heat the same on fire. He shall then throw into it a polished coin bearing an impression and made either of gold, silver, copper, or iron. The pot (which has been heated to boiling) in which waves and circles are rolling and rising up, and which is incapable of being touched even at the nail-points (of the fingers,) he should test it by means of a green leaf (being dipped into it) and thus prodncing a crisping¹ sound. And then he should address it by the following *mantra* viz: "O clarified butter thou art the purest of all things, thou art the ambrosia at a sacrifice. Burn this man, O purifier, if he is guilty, and be as cold as ice if he is innocent." He should cause the coin lying in the clarified butter to be caught by the person (wishing to perform the ordeal) who has observed a fast, and who has then bathed and has wet clothes on. The umpires should then examine his forefinger. He on whom no boils are seen is to be considered innocent, otherwise he is guilty". Here also should be observed the ceremony of invoking the Dharma &c. The address to the clarified butter is to be by the Chief judge; the *mantra* to be addressed by the performer of the ordeal is "O fire thou art of all sentiet beings &c.", From the text "they should examine the forefinger," the picking up of the coin is to be made by the forefinger only.

Thus ends the Ordeal of the heated *Masha*.

25

The ordeals of the Dharma and Adharma have been mentioned by Pitâmaha thus: "Now I shall describe Dharma and the test by Dharma and Adharma in the case Adharma. of men who are guilty of assault, who are pressed for payment, and those who desire to perform the expiatory ceremony." *Guilty of assault i.e.* in charges of assault. *Who are pressed for payment i.e. in money claims.* *Who desire to perform an expiatory ceremony i.e. in*

1. चुरुकार is the particular sound which is produced at the combination of fire and water c/o the Marathi चुरू.

accusations of sins. The rule as to the image is this: "The (image of the) Dharma should be caused to be made of silver, while that of Adharma either of lead or of iron."

He also mentions Another Course: "(The images of) Dharma 5 Adharma should be painted and in white and black (respectively) on the leaf of a birch-tree or on a cloth. Having anointed the same by means of the Panchagawya¹ he should worship them with sandal-paste and flowers, the Dharma having white flowers, while the Adharma having black flowers on." Thus anointed, the two should be placed on two balls. The 10 balls should be prepared either of cow-dung or of earth, and should be placed unseen in an earthen pot which is unbroken, and (the pot) should be placed in front of the Gods and the Brāhmaṇas on a spot which has been washed and cleaned. Then, as mentioned before, the guardian Deities he should invoke, and after invoking Dharma, he 15 should write the document containing the complaint.: "If I am free from guilt, let the image of Dharma come up into my hand, and if I am guilty let the image of sin come in accordance with the law."—thus shall the accused address. "Then the accused shall forthwith take one of the two (images). If he takes the image of Dharma he is 20 considered to be innocent, if of Adharma he is (considered to be) defeated. Thus has been described in short the ordeal by the Dharma and Adharma."

Thus ends the Ordeal of Dharma and Adharma.

Others also *viz* oaths, have been mentioned by Manu² and others as being applicable according to the greater or less value of the amount, as also having a reference to particular caste, thus: "In the case of (where the value of the subject matter is) a *Nishka*, there shpuld be an affirmation on oath; in the case of two *Nishkas*, the touching of the 25 feet; and for less than three, an oath by the meritorious deeds; and after that the drinking of the *Kos'a* water. "Let the (Judge) cause

1. पञ्चगव्य is a special combination prepared by mixing together the five bovine products *viz.* milk, curds, butter, the urine, and the dung, all pertaining to a cow; and hence (it ie) called पञ्चगव्य.

2. Oh. VIII 113-114.

a Brâhmaṇa to be sworn by his veracity, a Kshatriya by his chariot or the animal he rides on and by his weapons, a Vais'ya by his kine, grain and gold, and a Sudra by (the imprecation of) all the heinous sins."

Here, moreover, the index of the innocence has been given by **Manu**¹—viz.: “He who meets with no speedy misfortune, must be held innocent on (the strength of) his oath.” The misfortune also has been stated above in the text²: “On whom no calamity falls either by the act of God or that of the king” The rule as to the duration of time also should be observed to be to commence from one night and to extend to three nights, commencing from the third night, and extending as far as the fifth night, or of one night &c., after determining the importance or pettiness of the case in hand. The penalty also has been mentioned by **Kâtyâyana**³ when thus the success or defeat of a party has been determined by means of ordeals, “The innocent should be caused to be paid half of a hundred and the guilty becomes liable to punishment.” He⁴ mentions the penalty: “In the case of the ordeal of poison, water, fire, balance, *kos'a*, and rice, as also in the ordeal of the heated *mâsha*, the penalty should be determined respectively as follows:—viz. one thousand, six hundred, and five hundred, four, three, two, and one hundred, respectively; the lesser form to be selected in the case of pettier offences.” By reason of the text⁵—“When upon a denial, a claim is proved, he should pay (the amount)” &c. in which a penalty has been mentioned, this penalty under the (law of) ordeals comes to be an addition (to it).

Thus ends the chapter on *Ordeals*.

Viramitrodaya.

Now in the case of petty accusations, the four ordeals such as the Rice and the rest, not particularly stated by the Author of the Work, are being stated. Thus Pitâmaha (same as on p. 971 lines 34–35 and p. 972 ll. 1–13 lines above). Here, moreover, the invocation

1. Ch. VIII. 115.

2. Yaj II 113 See p. 969 above.

3. Verse, 459.

4. Kâtyâna, Verses 460, 461.

5. Yaj. II. 11. see above p. 686. ll. 33–34.

of the Dharma and the other procedure should be understood to be for the three (ordeals) which will be stated hereafter. Moreover, "A pot made either of gold, or of silver, or of copper, or even of earth, with a depth of four angulas and measuring sixteen angulas and 5 of a circular shape, he should fill with clarified butter and oil weighing twenty *palas*, and after it is boiled to a heat, a gold *masha*, should be thrown into it. He should take out the heated *masha* by joining the thumb and a finger. He who does not shake the forefront of his hand or on whom no eruption has been produced, 10 is deemed under the law to be innocent, since his hand and the fingers were unaffected." *Mandalam*, i.e. a circle; *uddharet*, 'take out', i.e. take outside (the pot).

15 *Bṛhaspati*¹: "Iron twelve *palas* in weight formed into shape is called a plough-share; it should be eight *angulas* in length and four *angulas* in breadth. That (plough share) having been made red-hot in fire, the thief should lick it once with his tongue. If he remains unscorched, he obtains an acquittal; otherwise, however, he loses his cause."

20 Pitāmaha describes the ordeal of Dharma (see above p. 973 ll. 27-33 and p. 974 ll. 1-22).

Now the Oaths. There Manu²: "A Judge should swear a Brāhmaṇa by the truth; a Kṣatriya by his vehicle and weapons; a Vaiśya by the kine, seeds and gold; while a Śūdra with all the sins; or these should be made to touch the heads of their sons and wives."

25 "Should this have been committed by me, then the sin generated by the transgression of truth should be mine", thus a Brāhmaṇa should be made to say. "Should this harm have been done by me then my conveyances and arms may become unfruitful", thus should a Kṣatriya be made to declare; and so on further.

30 Halāyudha states the meaning of this text in substance to be thus: "This is true," thus a Brāhmaṇa should be made to affirm; a Kṣatriya should be made to touch the conveyance and weapons; a Vaiśya should be made to touch the cow &c. and the sin which is generated by false oaths, with that he should enjoin a Śūdra 35 falsifying an oath. All should be made to do as stated before".

*Bṛhaspati*³: "Truth, a vehicle, weapons, cows, seed, and gold; the feet of the Gods or of the Brāhmaṇas, the heads of sons or wives; these

1. Ch. X. 28, 29.

2. Ch. VIII. 114, 115.

3. Ch. X, 6, 7.

are stated to be for oaths by Manu in small matters". Here, as an oath is distinct from an ordeal, there is no fasting &c., but only bathing and sipping water.

S'ankha: "The staking of the merit generated by pious¹ and charitable deeds &c., and should also cause other oaths to be taken." 5

Manu²: "One falsifying an oath perishes here and after death. In connection with amorous women, in regard to marriages, in the feeding of cows, as also regarding fuel, and for protecting a Brāhmaṇa, by taking a false oath, there is no sin". 'In connection with amorous women' i. e. in private, for keeping the woman pleased. 10 'In marriage' i. e. by women for the husband. For the feeding of the Cows, fuel, for the performance of the daily oblation; also for the saving of the life of a Brāhmaṇa, a cow &c., even by a false oath, no sin is incurred. This is the meaning.

Here in the Commentary on Srimat Yājñavalkya
ends the Chapter on Ordeals

15

S'ūlapāṇi.

In the course of the discussion are mentioned the Rice, &c. Here Pitāmaha: "In the case of theft the rice should be administered, and not elsewhere; this is certain. Pure rice should be caused to be prepared from paddy grains and not of any other. In an earthen pot one should place it in front of Āditya, after having purified oneself. These should be mixed with the bath water; at night he should be made to stay there. In the early dawn, it should be given to the performer, with his face towards the Sun. After chewing the rice he should be made to emit on a leaf three times. He whose blood appears to ooze, or the tooth-row is affected with pain; one whose limb gets a shake, such a one the Judge should declare as not innocent." 20 25

Now the ordeal of the Heated Māsha.

One should cause to be made an iron vessel, or one of copper of 30 sixteen angulas, and of four angulas (in depth) or of earth either, of a circular shape; and should fill it with clarified butter and oil of the quantity of twenty palas; when it is well boiled, one should throw a gold

1. इष्टापूर्ति—Pious and charitable deeds such as performing sacrifices, digging tanks, etc. see p. 806. n. 2 above.

2. Ch. VIII. 112, 113.

māṣha in it. He should take out the heated *māṣha* with the fore-finger and another finger joined together. Where neither the forepart of the hand is burnt, nor a boil appears, such a one is regarded as innocent according to law, as is the text of Pitāmaha. *Mandala*, 'a circle'.

5 Now the ordeal of the Plough share—*Phāla* (same as in the Viramitrodaya at p. 976, above).

Now the ordeal about Dharmaja—Result of Dharma.

There Br̥haspati¹: "On the leaves should be painted (the images of) Dharma and Adharama in black and white colour, (respectively). Then 10 they should be invoked with the *Mantras* inducing vitality and others, as also with the Gāyatri and Samas. Thereafter one should offer worship with sandal paste, and flowers, also white and dark. Having sprinkled with the five bovine products, and enclosed in balls made of earth, having made (them) equal in size, these should be placed unobserved in a new jar. 15 Thereafter the performer of the ordeal should take one ball out of the vessel when asked (by the Judge). If Dharma is taken, he is acquitted; otherwise he is declared guilty".

Thus ends the ordeal of Dharmaja.

Now the Oaths: Nārada²: "Truth, the conveyances and weapons, 20 cows, seeds and gold, the feet of the Deities and of the Brāhmaṇas; and meritorious acts as may have been performed. These have been stated as (the objects for) oaths by Manu in small matters".

Also Manu³: "By the truth should a Brāhmaṇa be affirmed; a Kshatriya, by the conveyances and weapons; with the cows, seeds, and 25 gold, a Vais'ya; while a Sudra with (the imprecation of) all the sins". (113)

Thus ends the Chapter on Ordeals.

1. Ch. X. 30-34.

2. This is not found in Nārada. But see Br̥haspati X. 67.

3. Ch. VIII. 173.

XVII. **Âchâra-Mayûkha**—In this are described the ordinary and extraordinary rounds of duties. (Text) [Rs. 2.]

XVII. The **Kâla or Samaya-Mayûkha**—Rules for determining days &c. and the importance of each, together with the rites and duties to be performed are described (Text) Rs. 3.

XVIII. The **Srâdha-Mayûkha**—Kinds of S'râdhâs, their definitions, and an elaboration of their performance. (Text) Rs. 3.

XIX. The **Nîti-Mayûkha**—Describing the general principles of polity, duties, and functions of a king, his ministers, etc. (Text) Rs. 2.

XXI. The **Utsarga-Mayûkha**—Dealing with the dedication of water places and their purification when polluted. (Text) Rs. 1.

XXII. The **Pratishthâ-Mayûkha**—Consecration of Temples and also the re-establishment thereof. (Text) Rs. 1.

XXII I. The **Prâyas'chitta-Mayûkha**—Definitions and kinds of Prâyas'chittas and the result of non-observance. (Text) Rs. 3.

XXIV. The **S'uddhi-Mayûkha**—The Law of purification (Text). Re. 1.

XXV. The **S'anti-Mayûha**—Describing the several propitiatory rites (Text) Rs. 3.

XXV. The **Smṛtimuktâphalam**—by Vaidyanâtha Dikshita commonly known as the Vaidyanatha Dikshityam.
Part I Varnâsnam kânda Rs. 4-8.

,, II Anhika kânda. 4-8.

XXVI. **Dipakalikâ**—A commentary on Yâjñavakya Smṛti by S'ulapâni
(In the press.)

Other works by the same Author—

1. **Hindu Law**, Fourth Edition. Rs. 4.
2. **History and Principles of Roman Law**--With comparative references in the notes to parallel provisions in the Hindu law and other systems of law. This book is intended as a help to students preparing for the several Law Examinations, as well as a guide to Research and other students reading for the higher Examinations. Rs. 4.

धर्मशास्त्रमालायां ग्रथितपुस्तकानां सूची

ग्रन्थनाम	मूल्यम्	ग्रन्थनाम	मूल्यम्
१. याज्ञवल्क्यस्मृतिः मिताक्षराटीकासहिता ...	८	६. स्मृतिचंद्रिका—देवण्णभट्टकृता (आन्हिक- व्यवहार-श्राद्धकाण्डानि) ...	१२
२. सुबोधिनी व्यवहाराध्यायः—मिताक्षराटीका भट्टविश्वेश्वरकृता ३-८		७. स्मृतिसुक्ताफलम्-वैद्यनाथदीक्षितीयम् (१) वर्णश्रमधर्मकाण्डम् ... ४-८ (२) आन्हिककाण्डम् ... ४-८	
३. बाल्मी-आचाराध्यायः १०		८. मनुस्मृति मेधातिथिभाष्यसहिता (अप्राप्या)	
४. „ व्यवहाराध्यायः ६			
५. „ प्रायश्चित्ताध्यायः ६			

९ भट्टनीलकंठकृते भगवंतभास्करारव्यप्रवंधे ग्रथिता द्वादशमुख्याः रु. २३

संस्कारमयूखः ३—०	उत्सर्गमयूखः १—०
आचार „ २—०	प्रतिष्ठा „ १—०
काल „ ३—०	प्रायश्चित „ ३—०
श्राद्ध „ ३—०	शुद्धि „ १—०
नीति „ २—०	शान्ति „ ३—०
व्यवहार „ ४—०	

आंग्लभाषांतरितस्टीपग्रन्थास्तूपर्युलेखिता एव।

To be had of :—

Messrs. B. V. & Co.,

Book Agents and Publishers.

Scale Agents :—

(1) GIRGAON, BOMBAY (4).

(2) D. G. P. O. POONA (4).

